

1 IN THE UNITED STATES DISTRICT COURT.
2 FOR THE DISTRICT OF NEW JERSEY
3 CIVIL 02-2917 (JEI)

4 PATRICK BRADY, SALLY YOUNG,
5 HOWARD HOLLANDER, THEODORE CASE,
6 AND MICHAEL FINUCAN, individually
7 and on behalf of all others
8 similarly situated,
9 Plaintiffs,

10 V.

VOLUME 14
TRIAL TRANSCRIPT

11 AIR LINE PILOTS ASSOCIATION,
12 Defendant.

CAMDEN, NEW JERSEY
JUNE 30, 2011

13 B E F O R E: HONORABLE JOSEPH E. IRENAS
14 UNITED STATES DISTRICT JUDGE

15 A P P E A R A N C E S:

16 TRUJILLO, RODRIGUEZ & RICHARD
17 BY: NICOLE M. ACCHIONE, ESQ.
18 AND: LISA J. RODRIGUEZ, ESQ.
19 AND
20 GREEN JACOBSON, P.C.
21 BY: ALLEN PRESS, ESQ. (MO. BAR)
22 AND: JOE D. JACOBSON, ESQ. (MO. BAR)
23 For the Plaintiffs.

24 ARCHER GREINER
25 BY: STEVEN FRAM, ESQ.
AND
KATZ & RANZMAN
BY: DANIEL M. KATZ, ESQ.
FOR THE DEFENDANT AIR LINE PILOTS ASSOCIATION.

ELIZABETH GINSBURG, ESQ.
IN-HOUSE COUNSEL FOR ALPA.

1 Pursuant to Section 753 Title 28 United States
2 Code, the following transcript is certified to be an
3 accurate record as taken stenographically in the
4 above-entitled proceedings.

5 S/ LYNNE JOHNSON

6 Lynne Johnson, CSR, CM, CRR
7 Official Court Reporter
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17 LYNNE JOHNSON, CSR, CM, CRR
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19 UNITED STATES DISTRICT COURT
20 P.O. BOX 6822
21 LAWRENCEVILLE, NJ 08648.
22
23
24
25

1 (The jury enters the courtroom.)

2 THE COURT: Good morning, everybody.

3 Where in the United States of America is there a
4 federal court that starts three minutes before 8:30. I defy
5 you to find any court anywhere.

6 Mr. Fram.

7 MR. FRAM: Thank you. On behalf of ALPA, we call
8 David Holtzman to testify, please.

9 DAVID HOLTZMAN, sworn.

10 DIRECT EXAMINATION.

11 BY MR. FRAM:

12 THE COURT: Mr. Holtzman, try to keep as close to
13 the microphone as you can.

14 Okay.

15 Q. Mr. Holtzman, good morning.

16 A. Good morning.

17 Q. Can you tell us, please, who you work for?

18 A. I work for the Air Line Pilots Association.

19 Q. Let's get some are some of your background. How old are
20 you, please?

21 A. I am 63.

22 Q. Where did you grow up?

23 A. Near St. Louis, Missouri.

24 Q. Tell us about your education, please, starting with
25 college.

1 A. Sure. I graduated from Washington University in St.
2 Louis, with a bachelors in 1970, and with a master's degree
3 from Washington University in 1982, in political science, and
4 then with a law degree from St. Louis University School of
5 Law in 1986.

6 Q. Did you practice law for a time?

7 A. Yes, I did. With a labor law firm, Schuchhat, Cook &
8 Werner in St. Louis.

9 Q. For how long did you do that?

10 A. Five years as a practicing attorney.

11 Q. And tell the jury a little bit what labor side law
12 involves?

13 A. Well, in our particular practice, it involved
14 arbitrations, and we represented electrical workers and sheet
15 metal workers with various construction contractors. We also
16 represented the Missouri National Education Association,
17 which is school teachers, and we represented unions and
18 individuals in court, before administrative agencies, and
19 before arbitrators.

20 Q. You made a decision to move on from the practice of law
21 at some point?

22 A. Well, I applied for a legal position in the
23 representation department in 1991.

24 THE COURT: In ALPA?

25 THE WITNESS: Yes.

1 Q. Okay. And I take it you were hired?

2 A. Yes.

3 Q. Did you at some point begin to assist the TWA pilots?

4 A. Yes. I was immediately assigned to the TWA MEC and the
5 TWA MEC office located then in Maryland Heights, Missouri.

6 Q. And your position assisting the TWA MEC was what?

7 A. Yes, my title was contract administrator.

8 Q. Was this a full time position?

9 A. Full time position, yes.

10 Q. What were your responsibilities as a contract
11 administrator for the TWA MEC?

12 A. A contract administrator is an on-site advisor to the
13 MEC, also to the MEC officers, and to the committees of the
14 MEC, including especially the negotiating committee, and the
15 grievance committee.

16 Q. And for how long did you serve as a contract
17 administrator for the TWA MEC?

18 A. Well, I served continuously until we closed the office
19 in 2002.

20 Q. Give us a little bit more of a sense of what you do or
21 what you did on a day-to-day basis to work with the MEC. For
22 example, the MEC had meetings?

23 A. The MEC was, by Constitution and bylaws, required to
24 meet twice a year. The TWA MEC usually had regular meetings
25 about four times a year, and ultimately had and also had

1 special meetings sometimes two, three, four times a year.

2 Q. What role did you play in connection with the meetings
3 of the members of the MEC?

4 A. Well, usually it was to appear with the committees that
5 were giving reports that I had been working with, usually
6 negotiating committee, the grievance committee, and the
7 system board of adjustment which is the arbitration board
8 under the Railway Labor Act, and air carrier collective
9 bargaining agreement.

10 Q. You started 1991, so you would have been working with
11 the MEC during the first two TWA bankruptcies?

12 A. Yes. The first bankruptcy was filed on January 30,
13 1992, and the second one on June 30, 1995 and those are
14 periods of more intense focus than in periods when the
15 carrier is not in bankruptcy so there are a day-to-day duties
16 that are different than the usual.

17 Q. I want to focus you on the year 2000, the year leading
18 up to the third bankruptcy filing in January, 2001. Can you
19 tell us what the TWA MEC was doing to be aware of TWA's
20 financial condition and to prepare for any potential
21 problems?

22 A. When one committee was appointed, a new committee called
23 the scenarios committee, and it was chaired by Captain Ed
24 Johns. And it had outside advisors and myself assigned to
25 it.

1 And the particular focus was to work with our
2 investment banker who we had retained, Michael Glanzer, and
3 the object really was to persuade TWA to do more than it had
4 been doing, or that we perceived it had been doing, to find a
5 merger partner.

6 Q. You mentioned Michael Glanzer. Do you recall when he
7 was retained?

8 A. He was retained in the spring of 2000, March or April.
9 And we had had investment banker, a different investment
10 banker almost continuously throughout the nineties, and then
11 changed over to Michael Glanzer and his firm in 2000.

12 Q. What specifically was Mr. Glanzer supposed to do to help
13 the TWA pilots?

14 A. Well, the, it the investment bankers looked for
15 transactions. That is their job. Along the way they give
16 you financial advice in our case, financial advice about the
17 status of TWA, its financial condition, its month to month
18 performance, and various, explaining various financial
19 criteria that we should be concerned about.

20 Q. Did you mention that there were other advisors who were
21 also assisting you and Mr. Glanzer to guide the TWA MEC?

22 A. Yes. Yes. We also retained the firm of LeBouef, Lamb,
23 which had been chosen by the MEC back in about the same era
24 that I came to the MEC in 1991, and occasionally Ralph Mabey
25 would assist us. He was a senior partner, a former

1 bankruptcy Judge in Utah, and at other times his partner,
2 Steve Tumblin, and it was Steve Tumblin who we worked with
3 most often with the scenarios committees.

4 Q. What type of financial information about TWA were the
5 members of the MEC getting in 2000, either from Mr. Glanzer
6 or from Judge Mabey or from you? Can you describe that for
7 us, please?

8 A. I am sorry, I didn't understand the first part. In
9 2000 you said?

10 Q. Focusing on the period before the bankruptcy. My voice
11 does not carry well. Please speak up if you don't hear. I
12 am going to try to stay close to the microphone.

13 I was asking you what type of financial information
14 were the members of the TWA MEC getting before the
15 bankruptcy either from Mr. Glanzer or Judge Mabey in this
16 firm or from you. Can you describe that in a little detail
17 for us?

18 A. Yes, the MEC and myself and the advisors were all
19 signatory to confidentiality agreements with TWA. We focused
20 on month-to-month data. We had looked at month-to-month data
21 for ten years and you look at revenue, year over year, and
22 you look at revenue month to month and you look at cash. You
23 look at what is happening on various expense categories,
24 importantly fuel, and you have a sense over time of how the
25 company is performing.

1 Q. You just made a comment about the importance of fuel.
2 Can you explain to the jury why the cost of fuel is important
3 in the airline industry?

4 A. Well, it is -- fuel is -- carriers buy fuel on a cash
5 basis. So the headlines you see about the cost of oil
6 directly impact carriers bottom line on an immediate basis.
7 So short term rises in fuel are sometimes unforecastable.
8 Expense items that have a big impact on the company's bottom
9 line.

10 Q. Did the MEC, before the bankruptcy filing in January,
11 2001, also getting information about what the board of TWA
12 was thinking?

13 A. We did receive information through the ALPA appointed
14 board representative, Bob Pastore. Steve Tumblin, the
15 outside counsel had been a -- had been our ALPA appointed
16 board member at a previous time. He had contacts within
17 management and with the board. He brought back information.
18 And we received reports from the CEO, Bill Compton also, from
19 the chief financial officer, Mike Palumbo.

20 Q. You say we received reports. Are you referring to the
21 TWA MEC?

22 A. The MEC heard reports from Bill Compton from time to
23 time, the CFO reports from Mike Palumbo, and usually the
24 pilots and advisors with the scenarios committee.

25 Q. Did those gentlemen, the CFO and Mr. Compton, did they

1 just send written reports up or did they come and sit with
2 the MEC face-to-face?

3 A. Bill Compton would come to MEC meetings and meet
4 face-to-face. With Mike Palumbo we would travel down town to
5 TWA headquarters and sit with him in his office and talk and
6 talk things over.

7 Q. What kind of financial shape generally was TWA in in
8 late 2000?

9 A. TWA was declining quickly in 2000. Its share price had
10 dropped below a dollar a share. The American stock exchange
11 had begun proceedings to de list TWA from the American
12 exchange.

13 October was a very poor month for revenue. Fuel
14 was increasing, and the company was --

15 THE COURT: This is October of 2000.

16 THE WITNESS: October of 2000.

17 A. The company was reaching out desperately for new
18 financing and to refinance or turn over loans with a
19 particular group of creditors and that was not going well.
20 And it was in extremely important condition.

21 Q. Was TWA in compliance with all of its obligations,
22 financial obligations, to the TWA pilots?

23 A. In December the company stopped paying contributions to
24 the pilots direct contribution plan called the directed
25 account plan or the DAP. And did not make -- TWA itself did

1 not make payments again.

2 Q. Were there discussions within the MEC in late 2000 about
3 whether TWA had the ability to continue on a so-called
4 stand-alone basis, as a carrier that just operated without
5 getting taken over by somebody else?

6 A. The evaluation that we received from Michael Glanzer was
7 that TWA could not be sustained as a stand-alone carrier,
8 overtime, and in fact, could not, or would not make it past
9 mid January due to cash shortfall.

10 Q. Mid January of 2001?

11 A. Of 2001.

12 Q. At what point in time did you receive, did the MEC
13 receive that evaluation from Mr. Glanzer, do you recall?

14 A. In November and throughout December.

15 Q. And what was the sense, your sense, what did Mr. Glanzer
16 say about where things were going, what TWA's potential
17 future was?

18 A. Michael Glanzer's view was that TWA needed a major cash
19 infusion via a transaction, in other words, a sale of TWA to
20 an air carrier immediately. And that had been the object of
21 the scenarios committee, was to try and make that happen.

22 Q. Tell us a little bit more about the scenarios committee.
23 Is this a committee made up of TWA pilots?

24 A. Yes.

25 Q. Do you recall who was on the committee?

1 A. Captain Ed Johns was the chairman. I believe that Bill
2 Kents, Captain Bill Kents was a member. I believe that John
3 Berlin was a member, also. Those are the three pilots that I
4 can recall right now.

5 Q. And what was this committee doing in terms of
6 investigating potential transactions?

7 A. Well, the committee reviewed the work of previous pilot
8 committees, and had a lot of knowledge and research about
9 potential transactions.

10 The problem and the issue was to persuade
11 management to do something about it because the committee,
12 the MEC didn't think that Bill Compton was doing enough. And
13 that really came to a head after the America West management
14 informed Compton and TWA that they were no longer in the game
15 for TWA, at least at that time, because they had some other
16 issues.

17 And America West had been a potential suitor and
18 there had been discussions including pilots over a couple of
19 years, so in September of 2000 we learned that America West
20 was no longer interested. So that was kind of the last hope
21 that we knew about.

22 So the scenarios committee was trying to, really
23 trying to place Michael Glanzer in a position to shop the
24 airline to other carriers because again we did not believe
25 that management was doing enough.

1 Q. Let's focus on who was involved in the MEC in late 2000,
2 who would have been getting the information and the parties
3 of the discussions. You mentioned Captain Bob Pastore. He
4 was the master chairman?

5 A. He was at that time, yes.

6 Q. Do you recall who the elected council representatives
7 were as of late 2000?

8 A. You know, they change from time to time with elections.
9 At that time, Council 4, for example, a senior pilot Bill
10 Cliff was the captain representative and Pablo Lewin was the
11 first officer representative.

12 Council 3, which is St. Louis, Steve Rautenberg was
13 the captain representative. Sally Young was the first
14 officer representative.

15 In New York, Council 2 was Howard Hollander and
16 captain rep and Dave singer as first officer representative.

17 Q. When the bankruptcy was filed in January and the
18 American Airlines deal was announced, what was your reaction?
19 Were you surprised?

20 A. I was very surprised, as were the pilots.

21 Q. Why were people surprised about, were you surprised by
22 the bankruptcy?

23 A. Well, the transaction came first, and then the
24 bankruptcy. The transaction -- well, we --

25 THE COURT: The transaction anticipated the

1 bankruptcy, a requirement of the transaction.

2 THE WITNESS: In a sense a requirement. I believe
3 they may have been separated by one day, I think January 9
4 and 10. I could be open by a day. But the asset purchase
5 agreement I think was January 9, and the bankruptcy would be
6 either January 9 or January 10, 2001.

7 But we had been having meetings about what to do
8 for pilots when they became unemployed by the shutdown of
9 TWA.

10 Q. Sir, when were those meetings?

11 A. Those were within the first week of January, 2001. Bob
12 Pastore asked the group of people -- I think also in fact
13 including Captain Ed Johns, to see what could be done. And
14 there wasn't much that we determined that you could really do
15 before the fact.

16 So we went from that kind of planning to the
17 announcement of a purchase by one of the strongest airlines
18 in the world. So it was astounding.

19 Q. Astounding in a good way?

20 A. In a good way.

21 Q. All right. Let's focus on the period of January, did
22 you read, have an occasion to read the asset purchase
23 agreement to see what the terms of the transaction were?

24 A. Yes.

25 Q. Okay. And what particular provisions did you think were

1 most, of most concern to the TWA pilots?

2 A. Well, there were two main provisions that were of
3 concern initially. One was a provision that said that the
4 purchaser, American, would hire TWA pilots except those who
5 had been terminated and there was also a phrase or a clause
6 relating to general hiring practices. And there were people
7 who were afraid that they had left American without giving
8 two weeks notice, they were afraid that they wouldn't be
9 hired with this transaction so there was some nervousness
10 about that, which didn't prove out to be a problem.

11 But obviously, the big thing was there was a
12 requirement that TWA amend its collective bargaining
13 agreements so that scope, successorship, and the benefit
14 plans, would not carry over to American.

15 Q. Did you have an understanding of why American made that
16 a condition of the deal, that scope and successorship be
17 waived?

18 MR. JACOBSON: I am going to object, your Honor, he
19 is being asked to read American's mind or intent.

20 THE COURT: No. I am going to let him answer the
21 question if he can. If he knows.

22 MR. FRAM: Just foundation, your Honor.

23 A. You know, the one hot-button issue, of course, for
24 American was that it be able to satisfy its own pilot group
25 recognized by the Allied Pilots Association, and that was as

1 to the pilot group of employees or other employees, of
2 course. But as to the pilots, that was a big concern to
3 American.

4 Q. Was there something about the relationship, the
5 collective bargaining agreement between American Airlines and
6 its pilots that was important?

7 A. Well, they had years of friction and problems between
8 management and the APA, and it was my perception that
9 American was trying to get along, make peace with its pilot
10 group.

11 Q. Do you recall what the American Airlines contract said
12 about new pilots coming in?

13 A. New pilots could be given seniority according to their
14 date of employment with American Airlines.

15 Q. Is that what is referred to as being stapled?

16 A. Stapled you generally go from one list to another. This
17 is just you are hired and the date that you are hired
18 determines your seniority number.

19 THE COURT: Here it is the date you were hired not
20 by the old airlines, but by American.

21 A. Well, it would be any new pilot coming to American,
22 whether off the street --

23 THE COURT: He would be treated, even if he had 30
24 years seniority, he would be treated as if he had just been
25 hired that day?

1 A. That's correct.

2 Q. Did the TWA MEC support the transaction, the American
3 purchase of TWA, notwithstanding the requirement that scope
4 and successorship be waived?

5 A. Yes, the MEC certainly did.

6 Q. Okay. Were they lukewarm about it, were they
7 enthusiastic about it, give us a sense?

8 A. They were very enthusiastic about it and made press
9 statements to that fact, and later statements in bankruptcy
10 court supporting the transaction.

11 Q. I wanted to show you one of those, D 294, which is not
12 in evidence.

13 I am handing you what has been marked as D 294 for
14 identification. Do you recognize that as one of the
15 statements?

16 A. Yes, I do.

17 Q. This is a statement of the TWA Master Executive Council
18 submitted to, it looks like the commerce size and
19 transportation committee of the United States Senate?

20 A. That's correct.

21 MR. FRAM: I move D 294 into evidence, please.

22 MR. JACOBSON: No objection.

23 THE COURT: D 294. In evidence.

24 Q. We are not going to spend a lot of time on this. Were
25 statements similar to this one supporting the transaction

1 issued to the press, issued to other governmental agency's
2 and the like?

3 A. Yes.

4 Q. Bob Pastore, you mentioned before, was on the board of
5 directors of TWA?

6 A. That's right.

7 Q. Did you recall him telling the TWA pilots that in his
8 capacity as a board member that he had voted in favor of the
9 transaction?

10 A. Yes.

11 Q. Any disagreement among the members of the TWA MEC, is
12 there anybody early on, let's say in January, who opposed the
13 transaction so, said this is a bad idea?

14 A. I don't remember anyone, any pilot, saying we shouldn't
15 enter into the transaction at any time.

16 Q. Tell us what the TWA MEC did internally to get organized
17 to move forward in terms of creation of committees and
18 communications, and all of that?

19 A. Sure. The immediate and first task was to appoint or
20 elect a merger committee to deal with the issue of seniority
21 integration with the Allied Pilots Association, merger and
22 acquisitions committee.

23 There were also other committees formed. There was
24 a merger oversight committee formed, and the vice chairman,
25 Scott Shwartz, was named as chairman to that committee.

1 Bob Pastore made a delegation of responsibility on
2 the day-to-day basis, for bankruptcy matters he would count
3 on Bob Stow, the secretary treasurer to oversee ALPA's
4 involvement in the bankruptcy process and for the merger or
5 transaction more generally Scott Shwartz would be
6 responsible.

7 Q. Was there also a negotiating committee that was
8 appointed?

9 A. The negotiating committee is a standing committee and
10 had been in existence.

11 Q. Okay. I am going to walk you through a stack of
12 documents just so we have them out there.

13 THE COURT: The negotiating committee was an MEC
14 committee.

15 THE WITNESS: The MEC negotiating committee. I am
16 sorry?

17 THE COURT: It was a MEC committee.

18 A. Yes.

19 THE COURT: Their role is normally negotiating with
20 TWA.

21 THE WITNESS: Correct.

22 THE COURT: With management.

23 THE WITNESS: Correct.

24 THE COURT: That was their role.

25 THE WITNESS: That part only changed slightly, but

1 you are correct.

2 Q. Mr. Holtzman, I want to walk through some documents. I
3 have handed you a stack. I just want you to identify the
4 first one, please. This is D 285 on top, your Honor. None
5 of these are in evidence yet.

6 Do you recognize this as an emergency motion for
7 interim and fine relief that was filed by TWA at the
8 inception of the bankruptcy?

9 A. Yes.

10 MR. JACOBSON: Objection, your Honor. I would say
11 that is a leading question. A little too leading.

12 MR. FRAM: Your Honor, I will rephrase.

13 THE COURT: I agree with you, but I am going to
14 allow it. Okay. Go ahead.

15 Q. Mr. Holtzman, what is D 285, please?

16 A. D 285 is TWA's emergency motion for interim and final
17 orders approving post-position financing.

18 Q. And is this a document that came to your attention
19 shortly after the bankruptcy filing?

20 A. Yes.

21 MR. FRAM: Your Honor, I move D 285 in evidence.

22 MR. JACOBSON: No objection.

23 THE COURT: D 285 in evidence.

24 Let me ask you one question. The interim
25 financing, that is financing for TWA to keep flying while the

1 bankruptcy is going on?

2 THE WITNESS: That's correct.

3 THE COURT: And it was being provided or at least
4 the order sought to be provided was American Airlines was
5 going to provide the interim financing as lender pending the
6 closing of the deal.

7 THE WITNESS: Correct.

8 MR. FRAM: Thank you, your Honor.

9 Q. Mr. Holtzman, did documents like this, filings, when
10 documents filed in the bankruptcy came to your attention, did
11 you have any responsibilities in terms of circulating them to
12 the members of the MEC?

13 A. Yes. I tried to circulate them at an appropriate time
14 either through the mail or at an MEC meeting.

15 Q. Was there anything in this particular document that
16 jumped out at you in terms of TWA's ability potentially to
17 continue operating without a bankruptcy?

18 A. Yes. I had mentioned before a run, that TWA had been
19 trying to refinance with a particular group the creditors.
20 And on page 10 of this motion, paragraph 22 F, the accounts,
21 airline receivable asset-backed notes, the facility is
22 described, and this is an obligation of 100 million dollars
23 that TWA owed to this particular group of creditors.

24 And I believe it is on page 16, paragraph 39, it is
25 noted that the securitization facility matures on January 15,

1 2001, after which all cash generated from sold receivables
2 goes to pay down the securitization trust, a process which
3 can take as much as 30 days.

4 What that meant was that the main source of TWA's
5 working capital, which was the receipt of accounts receivable
6 on a daily basis, was going to be interrupted to the extent
7 that this group of creditors were going to collect 100
8 million dollars from TWA.

9 So in effect they were taking TWA's working capital
10 for a month or more, to pay, capital to pay everything from
11 fuel to salaries and wages, and it was this particular
12 obligation that Mike Palumbo had described to us in October,
13 November, and December.

14 Q. He was the CFO, Mike Palumbo was the CFO?

15 A. He was the chief financial officer. As a priority for
16 TWA to satisfy and hopefully to refinance this debt. But
17 they were unsuccessful. This group of creditors wanted their
18 money and it was going to be taken through this come reply
19 indicated process beginning January 15, 2001.

20 Q. All right. Let's talk for a couple minutes before we
21 move into these other documents about Section 1113. Did you
22 know back in January what Section 1113 of the Bankruptcy Code
23 dealt with?

24 A. Yes.

25 Q. How did you know about Section 1113 before January of

1 2001?

2 A. Well, as I said, I had been with a union side labor
3 firm. I knew that 1113 grew out of I believe the Continental
4 bankruptcy in the mid eighties, and I knew, in the mid
5 eighties and I knew what it called for and how it had been
6 applied.

7 Q. Any discussions about Section 1113 during the two prior
8 TWA bankruptcies that had taken place?

9 A. No. There -- during the two prior bankruptcies TWA
10 management needed the cooperation of its unions and there was
11 no discussion of 1113 during those two bankruptcies.

12 THE COURT: Well, the pilots made concessions in
13 both of those bankruptcies, right?

14 THE WITNESS: That's right.

15 THE COURT: So there was no need to try to force
16 them, by rejecting their contract. They voluntarily accepted
17 pay cuts.

18 THE WITNESS: That is true --

19 THE COURT: And work rule changes.

20 A. And work rule changes. That's correct. My only
21 addition would be that management needed the ongoing
22 cooperation of the unions to make the airline run.

23 Q. How soon after the third bankruptcy filing in January of
24 2001 did the possibility of a Section 1113 motion come up?

25 A. It came up early on in our first meetings with Roland

1 Wilder who was the merger counsel that the MEC chose, and we
2 met in his offices in Washington, DC. And --

3 Q. Tell us when was that meeting, please?

4 A. This was approximately January 21, 22, 23, 2001.

5 Q. And who was present at the meeting, please?

6 A. I was present with the merger committee, and the merger
7 committee at that time was Bud Bensel, Gary Flor, Sean
8 Clarke, John Swanson and John Hefley.

9 Q. What was said about the possibility of a Section 1113
10 motion at that meeting on January 21, 22, 23, of 2001?

11 A. A lawyer in Roland Wilder's firm had signed his son,
12 Bill Wilder, mentioned that TWA might resort to a 1113 to
13 amend the collective bargaining agreement to take out the
14 scope, successorship and benefit obligations.

15 And it was his opinion that the union could defeat
16 such a motion.

17 THE COURT: Could defeat?

18 THE WITNESS: Could defeat the company's
19 application for such a motion if that occurred.

20 Q. Did he explain at that time why he thought the union
21 could defeat such a motion?

22 A. Not really, no.

23 Q. Did there come a point where a negotiated, where the
24 negotiating committee began to talk with TWA about trying to
25 amend the contract?

1 A. Yes. TWA management approached the MEC first with a
2 letter to Bob Pastore and then by setting up a meeting with
3 the negotiating committee. I believe the first meeting was
4 February 28, 2001.

5 THE COURT: It would have been the negotiating
6 committee, not the merger committee.

7 A. Negotiating committee.

8 Q. What role did you play in the negotiating committee?

9 A. Well, I was adviser, as contract administrator, adviser
10 to the committee and that meant spending a lot of time with
11 the committee, including at the bargaining table.

12 Q. All right. I want you to flip, skip over the next
13 document in the pile because we already talked about it. I
14 want you to turn to D 212. Do you have that in front of you?

15 A. Yes.

16 Q. What is D 212 please?

17 A. D 212 are the notes taken at that first meeting by our
18 paralegal, brook lance.

19 Q. That is the first meeting of the negotiating the
20 negotiating committee with TWA?

21 A. That's correct.

22 MR. FRAM: I move D 212 into evidence.

23 MR. JACOBSON: No objection.

24 THE COURT: D 212 in evidence.

25 Q. Let's bring it up and spend a minute on it. On the top

1 of the document is giving us the date and location as well as
2 the people who participated?

3 A. Yes.

4 Q. And the company people on the left were who?

5 A. Terry haze was vice president of labor relations for
6 TWA. And Bernie Plum was outside labor counsel hired by
7 TWA.

8 Q. Then on the right side it lists you along with the
9 members of the negotiating committee?

10 A. Ron Kiel and Alan Altman were members of the negotiating
11 committee. Mary Ulett was a benefit specialist officer at
12 the headquarters. Vince Lombardi was a pilot and a member of
13 the retirement and TWA MEC retirement and insurance company
14 me. And of course Brook Lance was the paralegal taking the
15 notes.

16 Q. Let's talk for a minute about your role with this
17 committee. Was your role in working with the negotiating
18 committee to tell the pilots what did what to do?

19 A. No, certainly not.

20 Q. What was your role? Describe it for us.

21 A. Well, a contract administrator working with the
22 committee does make suggestions, does give advice, and does
23 talk about the history of a, for example, of a particular
24 contract provision, if the pilots are unaware of the history
25 many times the pilots are more aware of the history than the

1 contract administrator's are. But generally to prepare, and
2 to be as well prepared as possible to meet face-to-face with
3 management.

4 Q. Is there any ALPA rule or understanding that when a
5 contract administrator gives advise, that the pilots are
6 supposed to follow it?

7 A. No. No. You, you know, the pilots are very independent
8 minded people. They are well educated. Many of them have
9 training and careers in other fields, the law, finance, and
10 they are well prepared to make their own decisions and they
11 do make their own decisions.

12 Q. How about at the MEC level generally, is it your role as
13 the contract administrator to tell the MEC what kinds of
14 decisions to make?

15 A. No. You just can't do it. You know, it is not really
16 professional to do so. But it is not something you can
17 succeed at, because the MEC makes the decisions and they take
18 that responsibility seriously and they, you know, for
19 example, they often have executive sessions. Sometimes they
20 say pilots only, which means staff and advisors and everyone
21 who is not a TWA pilot leaves the room. Other times it is an
22 executive session with named exceptions. In other words, you
23 know, Holtzman and Steve Tumblin, you know, stay in the room
24 with us.

25 And they run the show, basically.

1 Q. Were there occasions with the TWA MEC, we are going to
2 focus on the period leading up April 2 in a little bit, were
3 there occasions from after the bankruptcy up until April 2 of
4 2001 when you were excluded from the room?

5 A. There were.

6 Q. Well, the MEC went into executive session, yes?

7 A. Well, often they excluded everyone but pilots from
8 discussions with the merge her committee, not always, but
9 usual. (Merge her (.

10 Q. The merger committee also had meetings with their
11 counterparts at American Airlines?

12 A. Yes.

13 Q. Did you play the same roll in working with the merger
14 committee that you did with the negotiating committee,
15 meaning being there and giving advice and the like?

16 A. I did, except that it was secondary to the fact that we
17 had retained Roland Wilder as counsel for the merger
18 committee.

19 Q. But when the pilots met, when the two pilot groups met
20 --

21 A. Yeah, Roland Wilder and I were both excluded from the
22 meetings of the two groups at the insistence of the Allied
23 Pilots Association. They didn't want to have lawyers. They
24 didn't have lawyers present either but we were excluded from
25 that.

1 Q. Was there ever a situation during the entire year of
2 2001 where you were present when the merger committee's of
3 the two pilot groups were meeting?

4 A. No, there was not.

5 Q. Let's look through a couple documents here. The next is
6 D 3 79. Looks like an agenda from March 1, 2001, conference
7 call?

8 A. That's correct.

9 Q. What role did you play in preparing this?

10 A. It was an occasion to bring together the staff and
11 outside professionals that were working with the TWA MEC, and
12 from time to time we would either meet or have conference
13 calls, including pilots, whenever possible, to bring each
14 other up-to-date as to recent developments in the bankruptcy,
15 recent developments in the negotiations between the
16 negotiating committee and TWA and also of course between the
17 TWA MEC merger committee and the APA merger committee.

18 MR. FRAM: Your Honor, I move D 379 into evidence,
19 please.

20 MR. JACOBSON: No objection.

21 THE COURT: D 379 in evidence.

22 Q. Mr. Holtzman, I have sort of jumped from the bankruptcy,
23 in one, 2001. Were there meetings of the TWA MEC, formal or
24 special meetings, between, that took place between January,
25 2001 and the date of this memo?

1 A. Yes.

2 Q. Do you recall approximately how many?

3 A. There was January 11, 2001 and January 17 and 19, 2001.

4 I think the next one might have been February 15 or 16, and

5 then these are and then either March first or second, 2001.

6 Q. What is agreed between the meetings, are members of the

7 MEC communicating with each other and communicating with you?

8 A. They communicate a lot with each other, which, you know,

9 frankly we were, the staff is generally not in the loop on,

10 but we did, Scott Schwartz, did initiate conference calls

11 usually on a Wednesday at 11:00 a.m., which also included

12 Keith O'Leary who was the communications committee chairman.

13 And the purpose was just on a weekly basis to keep every one

14 in the loop on recent developments, and including especially

15 the communications committee which would then, you know,

16 filter out and filter out to the pilot groups with

17 information.

18 Q. Referring back to D 379, you see in the first paragraph

19 under pressure on unions from American, Holtzman's view, it

20 says American is putting pressure on its own unions with the

21 concept of TWA airlines LLC and on it was unions by talk of

22 Section 1113.

23 March 1 is before the Section 1113 motion is

24 actually filed.

25 A. Correct, yes.

1 Q. And I see there are some other discussion in there.
2 Then it says comments and questions. The list of people
3 there, were those people on this call?

4 A. The staff and professionals were on the call. I am not
5 sure about Tim Walsh. Tim Walsh was an attorney with LeBoeuf
6 Lamb in the New York office, and Ron Kiel I think was on this
7 occasion. But we would attempt to bring the pilots in on the
8 calls, but pilot keep their own schedules, so sometimes they,
9 sometimes to a greater degree, sometimes to a lesser degree.
10 I am not exactly sure on this particular call. I believe Ron
11 Kiel was on this particular call but beyond that I am not
12 sure.

13 Q. Mr. Kiel was the chairman of the negotiating committee
14 at this point?

15 A. Yes.

16 Q. Let's see the top of the second page, possible
17 negotiating committee positions. What should the negotiation
18 committee response to the demand for waivers mad -- I am
19 sorry -- what should be the negotiation committee's response
20 would have been for waivers made by TWA on 2/28. What was
21 the demand for waivers referring to?

22 A. That was the demand of waivers referred to in the asset
23 purchase agreement for waivers of scope, successorship,
24 benefit, on applicability.

25 Q. Then it says, it says, "Also, what are the 1113

1 implications of the following possible responses?"

2 Are those a list of issues that you outlined for
3 consideration?

4 A. Yes.

5 Q. And why did you take the time to do that? What
6 possible, what potential importance did you see Section 1113
7 having?

8 A. Well, 1113, at this time of course was not yet filed.
9 But of course, 1113 takes the contract and rejects it. And
10 the -- and so it is of great importance to understand the
11 implications of 1113 in different situations and different
12 contexts.

13 Q. Let's walk through a couple of these documents quickly.
14 The next document you should have is D 350, and you have --

15 THE COURT: I am sorry. D 250?

16 MR. FRAM: D 350.

17 I will do these en masse, if it okay.

18 Q. Are D 350, D 352, D 217, and D 354, all minutes of
19 negotiating committee meetings with TWA that you attended.

20 A. I would say no, because the paralegals aren't trained to
21 take verbatim minutes. So if you accept notes, yes, they
22 are.

23 MR. FRAM: Your Honor, I am going to move those
24 into evidence, D 350. 352 --

25 THE COURT: D 350, D 352, D 217 and D 354.

1 MR. FRAM: Yes. Thank you.

2 MR. JACOBSON: No objection, your Honor.

3 THE COURT: Then those four exhibits are in
4 evidence.

5 Q. Tell us generally, Mr. Holtzman, what is the negotiating
6 committee trying to do in the meetings that are taking place
7 as requested in these notes?

8 A. What we are trying to evaluate is how to respond, at
9 this time, March first, to the demand as it was initially
10 presented to us. And one of the main questions is do we ask
11 TWA, and through TWA to American, and to the management of
12 the new entity, which was about to be created, TWA Airlines,
13 LLC, do we ask for a process agreement which would also
14 necessarily be something that the APA would need to agree to,
15 in lieu of the waiver of scope and successorship.

16 If we could have a process agreement that would
17 give us arbitration, we would have the equivalent of what we
18 would be giving up about with the labor protective provisions
19 or scope.

20 Q. Tell us in a little more detail, what is a process
21 agreement? Does a process agreement necessarily evolve or
22 potentially end with an arbitration?

23 A. It doesn't have to. A process agreement is just what is
24 suggested is some sort of process or procedure for the
25 parties to work through issues, and come to an agreement on

1 a --

2 THE COURT: This would be an agreement between the
3 two unions?

4 THE WITNESS: It would be, it would need to have
5 the agreement of the two years. If the two unions agreed,
6 the management would certainly agree. But they would need to
7 be -- at least American would meet with the signatories as
8 well.

9 THE COURT: And why would American meet with the
10 signatories?

11 A. Well, because they are the party that has the collective
12 bargaining agreement with the APA.

13 THE COURT: If TWA LLC, that is American. Right.
14 So you later have to approve it.

15 A. Yes, yes, I agree. Yes. More correctly it would be the
16 LLC that would be -- no, it would be American, because
17 American and APA have the agreement that would put all new
18 hires at the bottom of the list. So it would need to be
19 American, it would be perhaps a one-time amendment to the
20 green book, the agreement with American and the APA.

21 MR. FRAM: Thank you, your Honor.

22 Q. All right. Just a couple more documents. D 219. What
23 is that, please? Tell us.

24 A. Do you have that one handy? D 219, the first page is a
25 fax cover page, second page says ALPA response to TWA request

1 for transition sensitivities.

2 A. I think I do. Give me one moment. I have it.

3 Q. Just to move this along. Is that a document that was
4 generated as part of the discussions between the negotiating
5 committee?

6 A. Yes.

7 MR. FRAM: Your Honor, I move D 219 into evidence,
8 please.

9 MR. JACOBSON: No objection.

10 Q. D 220, is that the next one, another document generated
11 as part of these discussions back and forth?

12 Q. ALPA's counter proposal with TWA revised proposal?

13 A. I have it.

14 MR. FRAM: I move D 220 into evidence, please.

15 MR. JACOBSON: No objection.

16 THE COURT: Okay. D 220.

17 Q. Did there come a point where you went to bankruptcy
18 court in Wilmington, in early March, I guess the beginning of
19 the second week of March?

20 A. Yes.

21 Q. What was happening in the bankruptcy court with respect
22 to TWA at that point?

23 A. The Court was considering the bids for the sale of TWA,
24 and the only qualifying bid was American Airlines, and a
25 final hearing on that was required and the TWA MEC was in

1 town in Wilmington, Delaware, to attend those meetings and to
2 have an MEC meeting.

3 Q. Did you have occasion while you were in Wilmington at
4 that point to interact with representatives of TWA?

5 A. Yes. On the walk to the courthouse on, believe it was
6 the 9th, Ron Kiel, the negotiating committee chairman, was a
7 block ahead of me, and as he got in the elevator he said that
8 he spoke with Terry Hayes, vice president of labor relations,
9 of TWA, who handed him a document which was a proposal, and
10 it contained one paragraph which was, later came to be called
11 a regional best efforts letter.

12 And when I arrived at the courthouse Ron Kiel gave
13 the letter to me and I met up with Roland Wilder and we
14 reviewed it and decided that we should meet with Terry Hayes
15 and Bernie Plum actually in the courthouse that morning.

16 Q. Did you in fact meet with them?

17 A. Yes. Roland Wilder and I and Alan Altman met with
18 Bernie Plum and Terry Hayes. The clerk of the Court actually
19 let us sit in the courtroom to talk.

20 Q. And what comments or what discussion was there involving
21 Mr. Wilder about that proposal?

22 A. Well, Mr. Wilder told Terry Hayes and Bernie Plum
23 basically that the proposal, the regional best efforts
24 letter, was insufficient, that he needed to have a full
25 process agreement with an arbitration feature, and that also

1 that TWA -- that the -- yes, the TWA MEC had filed a
2 grievance to a violation of section one of the agreement, by
3 proposing that we waive scope and by making --

4 THE COURT: Who was the grievance against, TWA,
5 Inc.?

6 THE WITNESS: That's correct.

7 THE COURT: By agreeing to the contract of sale
8 with the waiver in it, they were violating the labor
9 contract.

10 THE WITNESS: That is exactly right.

11 A. And further, that if necessary, that ALPA would be
12 willing to go to court to uphold the contractual provisions
13 which called for, what is called Allegheny Mohawk, and --

14 THE COURT: Allegheny Mohawk is a provision that
15 provides for arbitration, basically.

16 THE WITNESS: Correct. And that we were willing,
17 Mr. Wilder said, to bring an action which would stay the
18 closing of the transaction.

19 Q. So an action to enjoin the American purchase of TWA
20 assets?

21 A. That's right.

22 Q. What was your reaction? This is March 9 of 2001?

23 A. Yes.

24 Q. What was your reaction when Mr. Wilder made these
25 statements to the representatives of TWA?

1 MR. JACOBSON: Objection, your Honor. I think
2 reactions of that type aren't facts in evidence.

3 MR. FRAM: Your Honor, I will rephrase.

4 THE COURT: Good idea.

5 Q. Had there been any prior discussions at the MEC level
6 about going to court and trying to enjoin the transaction?

7 MR. JACOBSON: I am going to object to this one.
8 There is no foundation that this man was present at all MEC
9 discussions.

10 THE COURT: Well, he obviously, limit your answer
11 to discussions where you were present.

12 Q. Let's put a finer point on it. Mr. Holtzman, was there
13 a single meeting of the TWA MEC between the bankruptcy filing
14 and March 9, 2001, that you did not attend?

15 A. There was not a meeting that I did not attend at least
16 part of.

17 Q. Okay. And you said you didn't attend part of the
18 meeting. What did you do to make sure you were up-to-date on
19 what had been discussed?

20 A. I spoke to people who did attend the meeting.

21 Q. To your knowledge had there been any discussions before
22 Mr. Wilder made this threat -- let me phrase differently.

23 Had there been any authorization of any kind from
24 the TWA MEC before Mr. Wilder made this threat for him to
25 make the threat or for the MEC to go to court.

1 THE COURT: The threat, the threat would be made
2 not to your own client, it would be made to the other side.

3 MR. FRAM: Yeah.

4 THE COURT: So there is no testimony here that the
5 other side was threatened to sue. We are talking about
6 advise he is giving to his own client.

7 MR. FRAM: No. Mr. Wilder made the threat to the
8 representatives of TWA on March 9.

9 THE COURT: All right.

10 MR. JACOBSON: Your Honor, the objection would be
11 that he hasn't set a foundation that he is aware of any of
12 the activities within the MEC executive sessions.

13 THE COURT: Well, if he was present when a threat
14 was made to TWA, that they are going to sue him or seek an
15 injunction of the transaction, I am going to let him testify
16 to that.

17 Q. Focusing --

18 THE COURT: Whether he was present at every MEC
19 executive session or not.

20 Q. To your knowledge did Mr. Wilder have authorization from
21 the TWA MEC that threatened to file a lawsuit against TWA and
22 American to enjoin the entire transaction?

23 A. To my knowledge, he did not.

24 THE COURT: Did he do that? Did he threaten TWA
25 with a suit?

1 A. Yes.

2 THE COURT: When?

3 THE WITNESS: On March 9.

4 THE COURT: You were present for that?

5 A. Yes.

6 Q. All right. Now, did Mr. Wilder subsequently raise this
7 idea of a possible lawsuit with the MEC? Do you recall that?

8 A. He discussed a theory of filing such a suit. It was not
9 in the context of asking for authorization. It was in the
10 context of describing what action might be taken.

11 Q. All right. What happens at the bankruptcy hearing in in
12 connection with the judge's consideration of the transaction,
13 what was the end result?

14 A. The Court approved the bid of American Airlines for TWA
15 assets.

16 Q. And you recall the date when that was approved?

17 A. It was either that Saturday, the 10th, or Monday, the
18 12th.

19 Q. All right. Let me hand you a document that may refresh
20 your memory, and I have a couple more issues here.

21 Do you recognize D 231 as the bankruptcy court's
22 order approving the American bid for assets?

23 A. Yes,

24 MR. FRAM: I move that into evidence.

25 MR. JACOBSON: No objection.

1 THE COURT: D 231 in evidence.

2 Q. The next is D 381. Do you recognize that as an agenda
3 that you prepared and had circulated on March 12, 2001?

4 A. Yes, I do.

5 Q. I move D 381 in evidence.

6 MR. JACOBSON: Did you give me D 381?

7 MR. FRAM: Should be the next one.

8 MR. JACOBSON: You bundled them together. I am
9 sorry.

10 MR. JACOBSON: No objection to that one.

11 THE COURT: That was previously marked into
12 identification. There was no objection. That will be in
13 evidence.

14 Q. Let's project that. Mr. Holtzman, this is an email of
15 March 12, an agenda for what, meeting, phone conference on
16 March 15?

17 A. This was an agenda for an in-person meeting at the ALPA
18 headquarters building in Herndon, Virginia.

19 Q. And looks like the topic there is TWA scope, seniority
20 integration and Section 1113 issues?

21 A. Correct.

22 Q. Had the Section 1113 motion been filed yet?

23 A. No.

24 Q. Then why are you circulating agenda that is focused on
25 Section 1113?

1 A. Well, it had become evident that this was a possibility.

2 Q. Who attended the meeting actually took place --

3 THE COURT: He said it was evident. How did it
4 became evident?

5 THE WITNESS: Well, Scott Schwartz was our MEC vice
6 chairman. He had a conversation with Kate Soled, the general
7 counsel to TWA, and asked how is it going with the IAM. She
8 said not well. He asked what the company would be doing
9 about that, and she said we are thinking about filing a 1113
10 motion.

11 So I knew from that that if they were considering
12 it for the IAM, that they would be considering it for our
13 union as well.

14 Q. Did this meeting take place on March 14?

15 A. Yes.

16 Q. In preparation for the meeting did you ask some of
17 advisors to do some research about Section 1113 and some
18 other issues?

19 A. Well, the -- to be prepared to speak to these particular
20 issues. These were people who had, many of them had
21 experience in labor issues. And would be up-to-date on
22 recent developments.

23 Q. And the next two documents in front of you. D 378 and D
24 380, are those memos that you prepared and circulated
25 requesting some research on 1113 and Railway Labor Act

1 issues?

2 A. Yes.

3 MR. FRAM: Your Honor, I move D 378 and D 380 into
4 evidence, please.

5 MR. JACOBSON: No objection to those.

6 THE COURT: Okay. Give me a second.

7 D 378 was already marked for identification. That,
8 without objection, is in evidence. Same with D 380, that was
9 previously marked for identification and is now in evidence
10 without objection.

11 Q. So we have the time line, I am going to put up where I
12 hope the people can see a blowup of some of the events from
13 late February and to early March. Can you see that okay, Mr.
14 Holtzman?

15 A. Yes.

16 Q. All right. So let's talk about these memos quickly.
17 The first memo, D 378 is from you to Richard Seltzer. Tell
18 us, please, who Mr. Seltzer was and what involvement he had
19 with the TWA MEC?

20 A. Richard Seltzer is an attorney with the firm of Cohen,
21 Weiss and Simon. Cohen, Weiss and Simon is general counsel
22 to the Air Line Pilots Association. Richard Seltzer had
23 worked with the TWA MEC in the 1992 bankruptcy, and he is
24 well known as an experienced advocate and expert on
25 bankruptcy issues, especially with regard to labor.

1 Q. Had he been involved in helping the TWA pilots before
2 the date of this memo?

3 A. Yes.

4 Q. And what had he been doing with respect to bankruptcy?

5 A. He worked with the Utah office of the bankruptcy, of the
6 firm that I mentioned, LeBoeuf Lamb, and they had also,
7 again, LeBoeuf Lamb being principally Ralph Mabey and Steve
8 Tumblin, and Richard and Ralph Mabey and Steve Tumblin had
9 worked together in the 1992 bankruptcy and had arranged
10 communications so that they would be coordinated, that they
11 would be both the, our legal representatives in the current
12 TWA bankruptcy, and they would take on a take on different
13 parts of the representation, and consult with each other.

14 Q. Focusing on this memo, you wrote, this is D 378.

15 Richard. This is a restatement of the question I raised with
16 you at the courthouse on Saturday.

17 The courthouse you are referring to there was the
18 bankruptcy court in Delaware?

19 A. Yes, in Wilmington, Delaware.

20 Q. The first question was assuming that TWA would use the
21 available April 6 court hearing for Section 1113 hearing
22 against ALPA, and assuming also that no agreements or waivers
23 are concluded between ALPA and TWA slash LLC or American,
24 what is the latest date that TWA could file a motion to
25 reject the pilots CBA for hearing on April 6?

1 What was it about the April 6 date that was causing
2 you concern?

3 A. Well, the bankruptcy court in Wilmington set aside a
4 certain number of days each month for the TWA case. And
5 April 6 was one of those dates. So it was, at this point, it
6 was a date that was soon going to be upon us. So the
7 question here is will the 11 13 motion be filed in time to be
8 docketed for April 6.

9 Q. The second question you raised in this memo, if American
10 continues to insist on scope waiver, ALPA refuses and no
11 substitute agreement is concluded, will TWA prevail against
12 ALPA on Section 1113. Why was that important?

13 A. Well, that is important because it, number 1, it would
14 accomplish the requirement of the asset purchase agreement to
15 strip away those provisions that American had required of TWA
16 for the transaction that follows. And it would also, if
17 granted, would reject the entire collective bargaining
18 agreement between TWA and ALPA.

19 Q. I am not going to spend time on the other questions, but
20 I see on the second page the bottom, you have got carbon
21 copies to quite a few people. Am I correct that the first
22 five people list listed there are all pilots?

23 A. Yes, that's correct.

24 Q. And Mr. Day was the chairman of the merger committee.
25 Mr. Kiel at that point was the chair of the negotiating

1 committee?

2 A. Yes. Mike Day had recently assumed the position of
3 merger committee chairman from Bud Bensel.

4 Q. And then the second memo we talked about is D 380 in
5 evidence. That is a memo you sent to Clay Warner, also March
6 13?

7 A. Yes.

8 Q. And you had a series of questions for Mr. Warner that
9 dealt with various bankruptcy issues. Correct?

10 A. Yes.

11 Q. If you would focus on the second page, Paragraph 2. You
12 had a specific question for him under 2. If the bankruptcy
13 court rejects the TWA ALPA CBA in whole or in part under
14 Section 1113, and assuming further that after closing the TWA
15 LLC employees, former TWA pilots, and operates the purchased
16 assets and given that American has stated that it will
17 recognize ALPA at closing, A, what will be the collective
18 bargaining obligations? I am paraphrasing. And B, assuming
19 that scope and successorship provisions of TWA ALPA CBA are
20 rejected, is there a statutory non-contractual argument under
21 the RLA that the LLC is a successor to TWA. It goes on. The
22 RLA refers to the Railway Labor Act?

23 A. Yes.

24 Q. That is the federal statute that governs not just
25 railway workers, but also pilots?

1 A. Also air carriers.

2 Q. And the third page of the document shows that you sent
3 carbon copies of the memo to the same people we discussed
4 before?

5 A. Yes.

6 Q. Did the TWA pilots, I am jumping ahead, but did the TWA
7 pilots get answers to and advice about the issues that you
8 outlined in these March 13 memos before they made a decision
9 on April 2 to accept the new collective bargaining agreement
10 and waive scope?

11 A. Yes, they did.

12 Q. This meeting that you had scheduled in the prior
13 document, the March 12 email scheduling the March 14 meeting.
14 Do you recall who was present at that meeting? That would
15 have been the day after the two memos we just talked about.

16 A. The only pilot that I can be sure of at this time that
17 attended was Scott Shwartz. I believe the other staff
18 members, and advisors did attend.

19 Q. Okay. Flip a long until you come to D 12. I am going
20 to skip a couple of these documents. Which is a motion by
21 TWA under Section 1113. I want you to --

22 THE COURT: Is that already in evidence?

23 MR. FRAM: I am not sure it is. I don't think it
24 is, your Honor. Let me check. It is not. I am told it is
25 not.

1 THE COURT: It is not in evidence. I have it.

2 MR. FRAM: I am going to move D 12, which is the
3 motion and D 211 which is the declaration of Terry Hayes in
4 support. I will move those in evidence.

5 THE COURT: What is the other one?

6 MR. FRAM: D 211, your Honor.

7 MR. JACOBSON: No objection to D 12.

8 THE COURT: What is the objection?

9 MR. JACOBSON: It has a lot of hearsay. I am
10 trying to decide. I may not.

11 THE COURT: Let me know when you are ready.

12 MR. JACOBSON: I will let it all in.

13 THE COURT: D 211 is in evidence and of course D 12
14 is in evidence.

15 Q. Thank you, your Honor. So just to move this along. You
16 received copies of these documents, the actual motion
17 supporting certification shortly after they were filed?

18 A. Yes, I believe the company provided those to us
19 initially.

20 Q. The company, the TWA negotiating committee?

21 A. Yeah, the management team provided us with a copy, and
22 then we also received them from our own bankruptcy counsel
23 but I think, I am not sure which version this is. But we
24 received them within a day or so of each other from a couple
25 of different sources.

1 Q. What did you do to make the members of the MEC aware of
2 the motion and what the motion was asking for?

3 A. I sent them around with a short cover memo which I
4 believe was with the Friday mailing, the MEC office, would
5 mail out, you know, documents of all sorts, to the MEC
6 members each Friday.

7 Now, as I recall, this was, my memo was dated March
8 17, which was a Saturday, 2001, so it may have held over to
9 the MEC meeting the next week, which I think is more likely
10 the case. But I am not sure right at the moment.

11 Q. D 3 85, is that the next document you have in front of
12 you?

13 A. Yes.

14 Q. That is a document you prepared?

15 A. Yes.

16 THE COURT: What is the number?

17 MR. FRAM: It is D 385, your Honor. It is headed
18 Major Advantages of the Proposed LLC ALPA CBA versus Section
19 1113 Rejection of the ALPA CBA."

20 A. Yes.

21 Q. Is that the cover memo you referred to?

22 A. No.

23 Q. This is something different.

24 MR. FRAM: Let me move D 385 in evidence, your
25 Honor.

1 THE COURT: Mr. Jacobson. D 385?

2 MR. FRAM: We actually have a couple other
3 documents attached to it, but they are already in evidence.

4 MR. JACOBSON: No objection.

5 THE COURT: Okay. D 385 in evidence.

6 Q. There was reference to an April 6 date in your memo I
7 think to Mr. Seltzer. Did you have an understanding when TWA
8 filed the formal motion on March 15 of when it was scheduled
9 to be heard by the bankruptcy court?

10 A. I think Richard Seltzer let us know perhaps on March 19
11 or 20 that it was scheduled for April 6.

12 Q. All right. Tell us what steps, given the fact that the
13 motion has now been filed, or scheduled for April. 6, what
14 steps did you take to assist the TWA MEC to make decisions
15 about what to do?

16 A. We had an MEC, an MEC meeting had been scheduled by the
17 decision of the MEC at the meeting in Wilmington, Delaware,
18 so we brought in the staff and advisors to speak to the MEC.

19 Q. When was that meeting?

20 A. March 21, March 21, 22, 2001.

21 Q. I handed you a series of documents that are in evidence.

22 THE COURT: They are already in evidence?

23 MR. FRAM: Yes, your Honor.

24 Q. D 382 in evidence, you recognize that as a March 19,
25 2001, email scheduling a special MEC meeting for March 21 and

1 March 22, 2001?

2 A. Yes.

3 Q. Then do you recognize the agenda that is attached to
4 that?

5 A. Yes.

6 Q. Pull those up quickly. Everybody has seen them at least
7 five times now.

8 Q. This is the agenda. Part of this meeting is going to be
9 updates from the negotiating committee and the transaction,
10 of the merger committee, correct?

11 A. Yes.

12 Q. Tell us who is present at this meeting in terms of
13 outside advisors?

14 A. I believe all of advisors and staff listed here under
15 transaction update, were present. That includes myself,
16 Steve Tumblin, Michael Glanzer, Richard Seltzer, Clay Warner,
17 row than land Wilder and Bob Christy.

18 Q. All right. Did any of advisors at the meeting give
19 their views about whether the Section 1113 motion was likely
20 to be granted?

21 A. Richard Seltzer gave his view that the 1113 motion was
22 likely to be granted.

23 Q. Do you recall the specifics of what he said in that
24 regard?

25 A. Well, he basically said that his judgment that this

1 bankruptcy, this Judge in this context of a failing airline
2 with a white knight purchaser, was very likely to grant the
3 1113 so as to permit the transaction to close, and bar the
4 St. Louis community and the passenger public generally could
5 benefit from the transaction.

6 Q. Did he at that meeting give any percentage predictions
7 about how likely it was that the motion would be granted?

8 A. I believe it was at this meeting that he said that it
9 was 99 percent.

10 Q. Did other advisors give opinions or express views
11 about the likelihood that the Section 1113 motion would be
12 granted?

13 A. I think Steve Tumblin said that he would say 98 percent.

14 Q. And did he explain his reasoning?

15 A. His reasoning was similar to Richard Seltzer's, that
16 this is a transaction that needs to happen and the Judge was
17 going to remove obstacles, essentially in the way it would
18 happen.

19 Q. Did any of the other advisors present disagree with the
20 assessment of Mr. Seltzer and Mr. Tumblin that the bankruptcy
21 Judge, that this particular bankruptcy Judge, was highly
22 likely to grant the 1113 motion?

23 A. I don't recall any other adviser disagreeing.

24 THE COURT: Was the decision made to oppose the
25 motion, for the union to oppose the motion.

1 THE WITNESS: I don't think there was a decision
2 made, but we would be opposing it, there would be --

3 THE COURT: Well, it had, was the law firm
4 authorized to oppose the motion?

5 A. The law firm, to my understanding, was authorized to
6 oppose it.

7 THE COURT: What law firm?

8 A. Richard Seltzer's firm, Cohen, Weiss and Simon.

9 THE COURT: Did they oppose the motion? Did they
10 file papers giving you a reason as to why they opposed the
11 motion?

12 THE WITNESS: Yes, sir.

13 Q. Did members of the MEC present at the meeting ask
14 questions about Section 1113 issues?

15 A. Yeah, there were a lot of questions.

16 Ted Case raised the issue of whether, if the
17 collective bargaining agreement were rejected, whether the
18 TWA pilots could lawfully strike, and Richard Seltzer
19 responded to that, saying that yes, that a strike would be
20 level, pointing out, however, that it would be a strike
21 against the old company, Trans World Airlines, Inc., not the
22 new company, and presumably if the --

23 THE COURT: You couldn't strike the new company,
24 they weren't the employer yet.

25 A. Well, we questioned whether they could strike the new

1 company at all.

2 THE COURT: They weren't the employer.

3 THE WITNESS: That's right.

4 THE COURT: They didn't run the terminal, they
5 didn't run the hub. It was still TWA, Inc., the original
6 employer who was the employer at this point in March, prior
7 to April 6.

8 THE WITNESS: Right.

9 THE COURT: TWA LLC, the deal hadn't closed.

10 A. Right. So presumably if it was rejected on the 6th and
11 it closed as it did on the 9th, potentially you would have a
12 two day strike against the old company. That would be the
13 scenario.

14 THE COURT: The discussion that, in rejecting a
15 contract, is not necessarily rejecting the union as
16 representative of the workers. That is not the same thing.
17 Was there any discussion about that.

18 A. There was discussion about that more at the April 1
19 meeting than at this particular meeting?

20 Q. Were there other questions that MEC members asked about
21 Section 1113 issues?

22 A. There were questions about the appeal process and
23 Richard responded to those. Steve Tumblin may have also
24 responded.

25 Q. When you say the appeal process?

1 A. Well, your right to appeal a 1113 order.

2 Q. So the question was if the bankruptcy Judge grants the
3 1113 motion, and rejects the contract, what right do you have
4 to appeal?

5 A. That is the question. And you do have, of course, a
6 right to appeal.

7 Q. Okay. Was there a discussion about what the status of
8 the TWA pilots would be if the Section 1113 motion were
9 granted and the contract were rejected?

10 A. Yes.

11 Q. What was what was discussed about that?

12 A. If the TWA ALPA pilots were rejected, and the
13 transaction closed, the pilots would not have a collective
14 bargaining agreement between ALPA and the new entity, TWA
15 airlines LLC.

16 Q. And --

17 THE COURT: Even if it even if there was no 1113
18 motion, would there be a contract with the new employer or
19 would it be considered a successor and that is why the
20 contract would continue on.

21 THE WITNESS: Well, you could not have, you could
22 not have contractual successorship because that was one of
23 the provisions that was, it had to be waived or be rejected
24 by 1113. So there be would be no contractual right to have
25 the contracting over to --

1 THE COURT: But if the 1113 were denied, and
2 American closed notwithstanding the absence of the waiver,
3 then you could have successorship.

4 A. Well, the thinking there was if it were denied, that it
5 would not close and American Airlines would walk away from
6 the transaction all together.

7 Q. Was there discussion about what might happen if the
8 Section 1113 motion was denied, if the contract wasn't
9 rejected?

10 A. Clay Warner was there, and he gave something close to a
11 formal presentation, and one of the issues that he addressed
12 was the lose/lose character of the 1113 motion. In other
13 words, if you lose the motion, the contract is rejected. The
14 transaction closes, you don't have Allegheny Mohawk, you
15 don't have a right to seniority integration arbitration and
16 you don't have a collective bargaining agreement. So you
17 have jobs but you don't have a contract. And you don't
18 have arbitration and seniority.

19 If you win the 1113 motion, the purchaser,
20 American, is not going to go against the APA, not to mention
21 the other unions on their property, and they are going to
22 walk away from the deal.

23 Q. And who, that was expressed by Mr. Warner as the likely
24 outcome.

25 A. Yes.

1 THE COURT: He is an ALPA lawyer?

2 A. He is an ALPA lawyer. Also significantly I think
3 Michael Glanzer, and Steve Tumblin, who have the contacts
4 within the corporate community, within the bankruptcy
5 communicate, who have some thinking on those issues.

6 Q. Did any of advisors present on March 21 and 22 disagree
7 with the concept that opposing the Section 1113 motion to the
8 hearing, going all the way, was a lose/lose proposition?

9 A. No. In particular, I think Roland Wilder agreed with
10 the proposition that it was lose/lose. The question had
11 been, I think originally raised by Ted Case. He was raising
12 most of the questions about 1113, about the strikes, about
13 the appeal process. And you know, what the sequence of
14 events could be.

15 Q. Did Mr. Case say that he was in favor of a strike or was
16 he just asking the question --

17 A. He was just asking the question.

18 Q. Did anybody at that meeting, any member of the MEC at
19 that meeting express the idea that the pilots should consider
20 striking?

21 A. No. No one did.

22 Q. Did any of the members of the MEC at this meeting, March
23 21 and 22, say that they were confused about the issues that
24 were being discussed?

25 A. No. It was a two-and-a-half to three-hour discussion,

1 and it was very informative. It was very informative to me,
2 and I think to everybody there.

3 Q. And did any of the members of the MEC appear to be
4 confused?

5 A. No.

6 Q. Just in terms of your personal observation?

7 A. No.

8 Q. What was the next step in term of moving this whole
9 process forward?

10 A. The next step was, you know, in light of the pendency of
11 the 1113 motion, a group of advisors had talked about the
12 importance of the next scheduled meeting between the two
13 merger committees. I am not sure when it had been, when the
14 date had been fixed, but there was a meeting scheduled for
15 the next week in the Dallas Fort Worth area. And Michael
16 Glanzer --

17 THE COURT: That was April 2.

18 THE WITNESS: No. I think it was March 28, 29.

19 Q. Okay. Did that meeting -- was there a discussion on
20 March 21 or 22 about this next meeting of the merger
21 committee?

22 A. Yes. On March 22 Michael Glanzer came to me and he said
23 he had been talking with the other advisors, and they were
24 stressing the importance of this next meeting and of the
25 possibility of the two committees reaching an agreement, and

1 of the urgency of at least making the attempt to reach an
2 agreement, and Michael Glanzer thought it would be beneficial
3 for some of advisors to meet with the merger committee prior
4 to meeting with the APA merger committee.

5 So I went to Scott Schwartz and I explained this to
6 him and asked if he could put such a meeting together. He
7 said he would --

8 MR. JACOBSON: Objection. I think he is getting
9 into hearsay.

10 THE COURT: I will allow it. Go ahead.

11 A. He then spoke to Mike Day who was chairman of the
12 merger committee, and arranged, and we agreed that we would
13 meet at a restaurant near the Dallas Fort Worth airport, and
14 we did.

15 MR. FRAM: Your Honor, is this a good time for a
16 break?

17 THE COURT: I think the jury wants that. We have
18 been at it about an hour 40 minutes. We will take a 15-
19 minute break until about 20 after ten.

20 (Jury leaves the courtroom)

21 THE COURT: I am holding my finger up. I am not
22 saying anything. You know what it means.

23 (The jury leaves the courtroom.)

24 (Recess)

25 (Jury even enters the courtroom)

1 DAVID HOLTZMAN, resumes.

2 CONTINUED DIRECT EXAMINATION

3 By MR. FRAM:

4 THE COURT: Mr. Fram.

5 Q. Mr. Holtzman, we were talking before the break about
6 discussions you had I think you said with Scott Shwartz who
7 would have been the MEC vice chairman on March 22 about
8 scheduling a meeting of the merger committees for the
9 following week. Do you recall that?

10 A. Yes.

11 Q. At what point in time was that meeting scheduled? When
12 was the meeting scheduled for, do you recall?

13 A. The meeting of the advice advisors with the MEC merger
14 committee was put together in the two days after the end of
15 the MEC meeting, that would have been March 23, March 24,
16 arrangements were made to meet with the committee whose
17 meeting had already been scheduled for the next week.

18 Q. Okay. I want to show you J 299 and J 301 which are both
19 in evidence.

20 MR. JACOBSON: 299, and?

21 MR. FRAM: 301.

22 Q. Do you recognize those as documents that were generated
23 during the course of the merger committee meetings on March
24 29, 2001, and -- March 28 and March 29, 2001?

25 A. Yes, I do.

1 Q. Okay. And did you and some of the other advisors have a
2 meeting with the members of the merger committee on the
3 evening of March 28?

4 A. Yes, we did.

5 Q. Okay. And that meeting was where?

6 A. Well, we first had a dinner meeting, and then we met
7 that evening at the Hilton Arlington in Arlington, Texas.

8 Q. Who were advisors present for the dinner and the
9 meeting?

10 A. I was. Clay Warner. Steve Tumblin. And Bob Christy.

11 Q. All right. So Clay Warner you told us before was an
12 in-house labor attorney at ALPA, correct?

13 A. Yes.

14 Q. Steve Tumblin was one of the bankruptcy attorneys from
15 the LeBoeuf Lamb firm?

16 A. Yes.

17 Q. Tell us, please, who was Bob Christy?

18 A. Bob Christy is a, excuse me, at that time, was a staff
19 member of ALPA in the economic and financial analysis
20 department.

21 Q. And who were the members of the merger committee whom
22 you had dinner with and then met with later on the evening of
23 March 28 of 2001?

24 A. The chairman, Mike Day, John Swanson, Gary Flor, John
25 Hefley, and Sean Clarke.

1 Q. Now, did the members of the merger committee you have
2 just described, were they aware before advisors met with them
3 that you all were coming?

4 MR. JACOBSON: Object to the form of the question.
5 It is asking for his knowledge of someone else's state of
6 mind.

7 THE COURT: Well, he has a basis for knowing it?

8 A. They knew we were coming to meet them.

9 Q. Did any of them act surprised when you met them for
10 dinner?

11 A. No.

12 Q. What was discussed during dinner and thereafter between
13 advisors and the members of the merger committee.

14 A. What was discussed was the, in the part of the room
15 where I was, was just the importance to the overall process
16 of reaching an agreement with the APA, if that was at all
17 possible.

18 Q. And why was that important as of late March to the
19 overall process?

20 A. Because the Section 1113 motion to reject the collective
21 bargaining agreement was scheduled. I don't know, eight or
22 ten days after.

23 Q. And what impact would an agreement between the pilot
24 groups on seniority integration have on the Section 1113
25 motion?

1 A. Well, the whole object of the process was to reach an
2 acceptable agreement. So if a waiver was still necessary, it
3 would be a painless waiver, at least in terms of seniority
4 integration.

5 Q. Do you recall the specifics of what was discussed
6 between advisors and the members of the merger committee
7 during dinner and later that evening about the kinds of
8 proposals, or the type of proposals that were going back and
9 forth?

10 A. It was, there was a discussion of whether a proposal
11 could be made to bring the parties closer together. There
12 may have been numbers discussed, but that was not something
13 that I was involved in. But the chairman, Mike Day, was
14 interested in making some movement, making an attempt at some
15 movement between the two committees.

16 Q. Do you recall some discussion about whether some TWA
17 pilots should be stapled as part of these discussions?

18 A. That was an issue, yes.

19 Q. Let's talk about kind of the tone of the meeting. Were
20 any of the ALPA advisors putting pressure on the members of
21 the merger committee to make any particular kinds of
22 proposal?

23 A. Not for any particular proposal. And as I said before,
24 you can't, you can't really cause a pilot to do something in
25 a leadership position that they don't want to do. You know,

1 they talked about different ideas for proposals, but you
2 know, I don't think anything would be characterized as other
3 than a suggestion.

4 Q. Do you recall any disagreements among the members of the
5 merger committee, among the pilots, about how they should
6 proceed?

7 A. No, I don't.

8 Q. And how late into the evening did the meeting go, do you
9 recall?

10 A. Well, the meeting went very late. But Bob Christy and I
11 and I think Clay Warner got on an elevator at about the same
12 time, eleven or 11:30 and we were headed to our rooms to get
13 some sleep, and the committee continued, I think Steve
14 Tumblin, stayed and worked with the committee rather late.

15 Q. Was an agreement on seniority integration reached the
16 next day between the pilot groups?

17 A. No.

18 Q. What happened next in terms of preparing the deal with
19 the Section 1113 motion that had been filed and was set for a
20 hearing on April 6?

21 A. Well, it was Thursday, the 29, I think, when I returned
22 to St. Louis, and we were then in the process of finally
23 collecting a proposal from TWA, and through TWA from TWA
24 Airlines, LLC, and in a couple of particulars from American
25 Airlines. So.

1 Q. I am sorry. Proposal for what?

2 A. A proposal for a collective bargaining -- both for the
3 waivers between TWA and ALPA, and also for a collective
4 bargaining agreement between ALPA and the new airline, TWA
5 airlines, LLC, which would go into effect if approved by the
6 MEC when the transaction closed.

7 Q. TWA LLC was the entity that was set up by American as
8 its wholly owned subsidiary?

9 A. Yes.

10 Q. Do you have in front of you D 210 which is in evidence.
11 It is a Thursday March 29, 2001, email, from Robert Stow
12 scheduling the meetings on April 1 and April 2? You should
13 have it there.

14 A. It may take me a moment to find it.

15 Q. I will give it to you.

16 A. Thank you.

17 Q. Whose suggestion was it, if you recall, to send this
18 email and schedule a work session on April 1 and a meeting to
19 begin on April 2 of 2001?

20 A. I suggested to Scott Schwartz that a meeting be
21 scheduled, as you say, with a work session on Sunday, April
22 1, and a meeting starting April 2 and Bob Stow initiated
23 that.

24 Q. As of -- by the way, why did you suggest a work session
25 on a Sunday on April 1, 2001?

1 A. Well, there were two factors. One is we wanted to
2 schedule it as soon as possible so that there was sufficient
3 time in advance of the April 6 hearing.

4 But more importantly on a Sunday, in a work session
5 would be less pressure filled and intense for the MEC. There
6 was the MEC is not in session, they can't reach a decision,
7 thus, there should be less -- they should feel less pressure
8 afternoon it should be more informal and hopefully useful for
9 the MEC members.

10 Q. When this email went out on March 29 scheduling the work
11 session and the start of and to start a meeting, had you
12 received the proposal from TWA LLC that you referred to
13 before?

14 A. I had not received it yet.

15 Q. Okay. At what point in time did you receive it, do you
16 recall?

17 A. I received it on Saturday, March 31.

18 Q. I want to show you what has been marked as D 115, which
19 is in evidence. Otherwise that the email which forwarded the
20 proposal from TWA LLC?

21 A. Yes.

22 Q. And it looks like it came in at 8:40 p.m. on Saturday,
23 March 31, of 2001?

24 A. That's right.

25 Q. What did you do afternoon receiving this to advise the

1 members of the MEC and advisors of its content?

2 A. The MEC knew to expect it and we had wanted it earlier,
3 but on Saturday evening I forwarded this proposal to the
4 members of the MEC.

5 Q. There is Saturday night, March 31. People were coming
6 to St. Louis for a work session the next day. Did it occur
7 to you that they may not be checking their emails between
8 Saturday evening and Sunday morning?

9 A. Well, I did, the next day I did ask and people said that
10 they had picked it up.

11 Q. Did you have any copies of it available for people who
12 wanted to look at it?

13 A. I asked if people needed copies when we got together,
14 and some had their lap tops open in front of them and I
15 didn't hear any requests, so we went forward with the review
16 of the proposal.

17 Q. All right. Let's talk about the work session on Sunday,
18 April 1, 2001. Tell us please who was present at the work
19 session?

20 A. The MEC officers, Bob Pastore, Scott Shwartz, Bob Stow,
21 Council 3 representatives Steve Rautenberg, Sally Young, the
22 Council 2 representative Howard Hollander, Dave Singer, and
23 the Council 4 representatives, Pablo Lewin, and I am not sure
24 if Allen Altman was present or not.

25 Q. With the possible exception of Altman all of the voting

1 members of the MEC were there for the work session on Sunday,
2 April 1, 2001?

3 A. That's correct.

4 Q. Which advisors were there?

5 A. On Sunday there was Roland Wilder, Michael Glanzer, Clay
6 Warner, Steve Tumblin. Staff -- Clay Warner of course was
7 staff. Bob Christy, also staff. Let me think to make sure I
8 am not leaving nine out.

9 Q. Was Richard Seltzer there?

10 A. Richard Seltzer was there.

11 Q. How about Randy Babbitt, was he there on Sunday?

12 A. Randy Babbitt was not there on Sunday.

13 THE COURT: You were there?

14 THE WITNESS: I was there.

15 Q. Were there presentations made on April 1 by the
16 different advisors?

17 A. Well, it started with, Roland Wilder and I were at the
18 front table, and it began with my review of the proposed
19 collective bargaining agreement. And then it moved on to
20 where I made a presentation -- recommendation, including the
21 recommendation that we accept the offer, and that we make
22 the waivers that had been requested, and enter into an
23 agreement.

24 At that point, or shortly thereafter, after I gave
25 some reasons for that, there were a lot of questions which

1 were mainly directed to advisors.

2 Q. When you say you made some recommendations, did you
3 prepare a document that you handed out?

4 A. Yes. I prepared a five-point list of recommendations.

5 Q. All right. Let me hand to you what has been premarked
6 as J 215. Just tell us, please, if the second page of that
7 is the list of recommendations that you prepared and handed
8 out at the work session on Sunday, April 1, of 2001?

9 A. Yes, it is.

10 Q. Okay.

11 MR. FRAM: Your Honor, I move J 215 into evidence,
12 please.

13 MR. JACOBSON: No objection.

14 THE COURT: There okay. Without objection, J 215
15 in evidence.

16 Q. The first page is extraneous. Put the second page up,
17 please. You see there is handwriting on the upper right-hand
18 corner. Presented to MEC 4/1/01. Is that your handwriting?

19 A. It is not mine. I think it was one of the paralegals
20 who I asked to help me keep track of documents.

21 Q. All right. It is dated I guess a couple days before the
22 meeting. Is that correct?

23 A. Yes.

24 Q. And you had five recommendations?

25 A. Yes.

1 Q. And the first one was to continue all current efforts
2 for seniority integration?

3 A. Yes.

4 Q. Second was seek CBA clarifications on a limited number
5 of issues, five or fewer.

6 Can you explain what you are referring to there in
7 terms of CBA clarifications?

8 A. It is common that when you approach an agreement, and to
9 have issues that the decision makers want to have resolved.
10 This was uncommon in that it was not a tentative agreement.
11 In other words, it was, in other words, the negotiating
12 committee had not signed off on the company's offer as
13 something that we were proposing as an agreement. It was an
14 offer.

15 But if there were things that could be improved, it
16 would be worth worthwhile to go back and ask for either
17 clarifications or for items that were meaningful but would
18 not be deal killers.

19 Q. All right. And the third point recommendation was
20 authorize bankruptcy counsel to open negotiations with TWA/
21 American counsel to incorporate CBA agreements in bankruptcy
22 court order resolving Section 1113 motion. Why did you make
23 that recommendation?

24 A. Well, if we were, first of all, if we were making the
25 waivers, there would be no longer any reason for TWA to move

1 against us for a rejection of the collective bargaining
2 agreement.

3 Secondly, it was just a way of, in we filed the
4 agreement with the Court, in the Court file, it would just be
5 one more way of solidifying what had been agreed to, so that
6 to try to cut down on a number of disputes over what the
7 agreement actually is, and says.

8 Q. And then the fourth point, authorize master chairman to
9 sign agreements, including waiver, when CBA negotiation is
10 complete. Resolve by Wednesday or early Thursday.

11 Why did you make that recommendation?

12 A. Well, that is the key recommendation, is the waiver,
13 and it is not going to be, it is not going to be effective
14 without the master chairman agreeing to it, or the MEC
15 agreeing to it as signified by the master chairman's
16 signature.

17 Q. And why did you indicate their resolve by Wednesday or
18 early Thursday?

19 A. Well, we would be in court on Friday, April 6. So the
20 company's offer of a collective bargaining agreement to apply
21 when the deal closed was, would drop dead on April 6 at the
22 beginning of the Section 1113 hearing.

23 Q. The fifth point was begin planning for post closing
24 actions to support merger committee. What was that about?

25 A. Well, it was a reaffirmation, really, that we are going

1 to continue all of our efforts to reach an agreement with the
2 APA.

3 Q. All right. So you gave a presentation and provided
4 these recommendations in writing on April 1, 2001?

5 A. Yes.

6 Q. Did other advisors talk to the members of the MEC to
7 provide their thoughts?

8 A. Well, it was really initiated by the MEC. Advisors were
9 towards the back of the room, and the MEC members just
10 swiveled their chairs away from the front towards advisors
11 and I think almost every MEC member had a question for almost
12 every advisor.

13 So there was a lot of questions. It was orderly.
14 But there was a give-and-take exchange for hour and a half,
15 probably.

16 Q. You told us earlier that there was discussion about the
17 1113 motion, the likelihood it would be granted, back at the
18 MEC meetings on March 21 and 22. Did that topic, the
19 likelihood that the Section 1113 motion would be granted, did
20 that come up on April 1 of 2001?

21 A. Yes.

22 Q. Tell us what you recall of that discussion.

23 A. Well, it was a very similar discussion to the March 21
24 discussion, with the MEC. And I think Richard Seltzer
25 amplified on his reasoning, and it wasn't new at that point,

1 but it was very focused, because now there was a decision to
2 be made.

3 Q. How about the issue of what might happen if the 1113
4 motion was denied, did that come up again on April 1 of 2001?

5 A. Yes, it did.

6 Q. And tell us what you recall about that topic, what
7 people said?

8 A. Well, Michael Glanzer and perhaps also Steve Tumblin,
9 mentioned that they had, I guess Michael Glanzer had
10 attended a creditors committee meeting and I think the, I
11 think the chief financial officer, someone very high up in
12 finance at American Airlines, appeared, and Michael Glanzer
13 gleaned from that that management was lukewarm, at best,
14 about the TWA purchase. And he mentioned that you have a
15 very significant risk, I can't remember his exact words, but
16 a very -- a very large and significance chance that American
17 could still walk away from the transaction.

18 Q. Was there any discussion on April 1 about the fact that
19 ALPA's lawyers had filed opposition to the Section 1113
20 motion several days earlier?

21 A. Yes.

22 Q. Who do you recall discussing that fact?

23 A. Richard Seltzer.

24 Q. Did members of the MEC have questions about the
25 opposition papers that had been filed?

1 A. They may have. It was, you know, it was a flurry of
2 questions in, I just can't recall about the opposition of
3 papers.

4 Q. Was there discussion on April 1 about what the MEC
5 should do if the decision was made to not accept the
6 collective bargaining agreement and to go to the hearing, to
7 go to the bankruptcy hearing on April 6 to oppose the motion.

8 A. Discussion about what?

9 Q. About how to prepare if the decision was made to oppose
10 the motion?

11 A. Sure. We were meeting on, then the second, in St.
12 Louis, so Richard Seltzer was in town.

13 So obviously, if we either chose to simply oppose
14 the motion, or if we also chose to bring the lawsuit that
15 Roland Wilder was advocating, we would need that week to
16 prepare for the hearing.

17 Q. So was there any discussion on April 1, 2001, about who
18 might testify at the hearing or what the evidence would be
19 if the decision was made to oppose the Section 1113 motion?

20 A. Richard had, Richard Seltzer had mentioned to me that I
21 would likely be a witness, and again I can't recall whether,
22 there were specific discussions about the preparation
23 process.

24 Q. You mentioned Ted Case had raised the issue of a
25 possible strike on March 21 or 22. Did the issue of whether

1 the pilots should consider a strike come up on April 1 of
2 2001, to your recollection?

3 A. I don't think so.

4 Q. You I think made reference before to Roland Wilder's
5 litigation theory. Was that discussed on, at the work
6 session on April 1 of 2001?

7 A. Yes.

8 Q. Tell us what you recall Mr. Wilder saying about his
9 litigation idea?

10 A. Well, it was separated from the previous discussion
11 because I had mentioned, I had mentioned that Roland Wilder
12 would have to leave. He had a meeting with a client, the UPS
13 pilots in Louisville, Kentucky, and he would need to leave
14 the meeting and I also mentioned that he had a different
15 view. So we.

16 Q. You mentioned this to whom?

17 A. To the MEC.

18 Q. You mentioned this to the group at large on April 1 of
19 2001?

20 A. Yes. At a certain point I, you know, took the
21 opportunity when there was some -- when there was a lag in
22 the questions to say to people, Roland, Roland Wilder needs
23 to leave and he has a different view. And so then Roland
24 spoke.

25 Q. What do you recall Roland saying about his different

1 view?

2 A. Well, he explained his theory once again, which was
3 based on what we call a minor dispute doctrine. We had the
4 grievance filed regarding the violation of section one of the
5 collective bargaining agreement, so the minor dispute
6 doctrine says to a court, enjoin this action, in this case
7 the closing of the transaction, so that this dispute can be
8 heard by the arbitration board, the systems board of
9 adjustment.

10 So that was the basic theory. Of course in this
11 case it was very much complicated by the fact that TWA was in
12 bankruptcy, and there was an automatic stay which prohibits
13 certain actions from going forward except in bankruptcy
14 court.

15 So he was saying that this particular action, being
16 an action for an injunction, was not barred, is not an action
17 for money damages, and he felt that it could go forward in
18 Federal District Court, and that a Federal District Court
19 would have exclusive jurisdiction over the action, and that
20 it would not be subjected to basically being removed to
21 bankruptcy court.

22 Q. Did Mr. Wilder talk about any of the risks that were
23 associated with running to Court, the Federal District Court,
24 and try to enjoin a major corporate transaction of the nature
25 proposed by American while -- after that transaction had been

1 approved by a federal bankruptcy Judge?

2 A. Well, he always felt, and he still felt then, that
3 American was so invested in the action and that it had
4 advantages for American Airlines that American would not walk
5 away. He acknowledged that there was some risk, but he
6 tended to minimize it.

7 Q. Focusing on the merits, setting aside what American
8 might do, did he talk about the likelihood that this lawsuit,
9 if filed, would be allowed to proceed?

10 A. He thought it would be allowed to proceed and that he
11 thought that the Section 1113 would -- could not go forward.

12 Q. Did he talk about the downside of what might happen if a
13 federal district Judge decided that an injunction was not
14 appropriate?

15 A. No, he did not.

16 Q. Did other advisors comment on Mr. Wilder's proposed
17 lawsuit to enjoin the entire transaction?

18 A. Yes. Richard Seltzer responded to it.

19 Q. And tell us, please, what did Richard Seltzer say he
20 thought of Roland Wilder's litigation theory?

21 A. I can't quote him exactly, but he had experience in the
22 Eastern Airlines bankruptcy, a case called Ionosphere Clubs,
23 I believe, it was a case I believe that he worked on, and he
24 recounted the holding of that case, which as I understand it
25 is that --

1 MR. JACOBSON: I object, your Honor. Now he is
2 getting into some case law told by some other lawyer.

3 THE COURT: I will sustain the objection.

4 MR. FRAM: Your Honor, I think we need to hear the
5 advice Mr. Seltzer gave to the MEC.

6 THE COURT: He is, not the advice, clarify the
7 holding.

8 Q. Did Mr. Seltzer explain the holding of the Ionosphere
9 case to the MEC on April 1?

10 MR. JACOBSON: I think that is the same question.

11 THE COURT: Ask about the advice, not what the
12 holding of the case was.

13 Q. Without giving us all the details, can you tell us, what
14 was Mr. Seltzer's bottom line in terms of whether he agreed
15 or disagreed with this litigation idea of Mr. Wilder?

16 A. He disagreed.

17 Q. And give us the sense of how strongly he disagreed, was
18 it lukewarm or was it, you got to be out of your mind
19 disagreement?

20 MR. JACOBSON: Your Honor, I think these type of
21 emotional things, I object to that throughout. Just what the
22 man said, what the facts are.

23 THE COURT: Just describe what Seltzer's reaction
24 was. What he said.

25 A. He very strongly disagreed, and also felt that the

1 bankruptcy judge would in effect take offense to attempting
2 to go around the bankruptcy court.

3 Q. Did other advisors, including other advisors who were
4 lawyers, express views about the advisability of Wilder's
5 litigation advice?

6 A. I know other advisors had views. I can't recite what
7 they may have said.

8 Q. Did you have views about whether you thought this
9 litigation theory was a good thing or not a good thing?

10 A. I did have views.

11 Q. What views did you have on April 1 of 2001?

12 A. My view was that the automatic stay provisions of the
13 Bankruptcy Code are very powerful, and I did not agree that
14 we could be successful, that we could successfully go around
15 that.

16 Q. Okay. And did you see some downside, potential
17 downside, of the litigation proposed, if the litigation
18 proposed by Mr. Wilder was pursued?

19 A. The downside would be the disfavor of the bankruptcy
20 Judge towards whatever ALPA might be asking the Court.

21 Q. Did any of advisors present other than Mr. Wilder speak
22 up in favor of his litigation idea?

23 A. No.

24 Q. Did any of the members of the MEC who were present
25 express interest in pursuing his litigation idea?

1 A. No.

2 Q. Do you recall any comments by members of the MEC about
3 his litigation proposal?

4 A. After his presentation and before Richard Seltzer's
5 response there were no questions, no comments.

6 Q. Okay. Let's just talk about the tone of the meeting.
7 Did any advisors tell the members of the MEC how they had to
8 proceed, what they had to do?

9 A. No. Absolutely not.

10 Q. Did any of advisors raise their voices or scream at any
11 of the members of the MEC during the meeting?

12 A. No, nothing like that.

13 Q. Did anybody scream at Mr. Wilder in terms of anything he
14 said?

15 A. No. It was very gentlemanly, and respectful, between
16 Richard Seltzer and Roland Wilder.

17 Q. Were there any questions from members of the MEC that
18 were not answered by the advisors?

19 A. I think the advisors gave it their best shot in each
20 case.

21 Q. Did anybody cut off discussion or say we spent enough
22 time on it?

23 A. No.

24 Q. Did any of the members of the MEC say that they were
25 confused or didn't understand what the advice was?

1 A. No.

2 Q. Did any of them appear to you just by observing them,
3 did people appear by their facial expressions appear to be
4 confused or not to understand?

5 A. They did not appear confused to me.

6 Q. Okay. All right. So let's move ahead now April 2 which
7 is the beginning of the actual meeting. You were present
8 again?

9 A. Yes.

10 Q. Was everybody who was there on April 1 present at the
11 meeting on April 2?

12 A. Well, Roland Wilder had left town. Bob Christy left
13 also. He may have been there briefly in the morning of April
14 2. I can't recall when he left. But he did leave.

15 Q. Okay. And did anybody new who wasn't there on April 1,
16 2001, arrive on April 2?

17 A. Among the MEC Ted Case was there on April 2, and Alan
18 Altman definitely was there on the second.

19 Among advisors, Randy Babbitt was there. Also
20 Katherine Powers, from the ALPA retirement and insurance
21 department staff was there.

22 Later in the meeting we had kind of a surprise
23 arrival from a former pilot named Joe Montenaro. He was not
24 on the agenda, but he came about ten o'clock and made a
25 presentation to the MEC.

1 Q. Did I hand you a copy of D 74 in every which is the
2 minutes of the April 2, 2001 meeting?

3 THE COURT: D 74?

4 MR. FRAM: D 74, your Honor.

5 THE COURT: In evidence.

6 A. I don't think you did.

7 (Pause)

8 Q. All right. Do you recognize that as the minutes, the
9 official minutes of the meeting on April 2 of 2001?

10 A. Yes.

11 Q. And you mentioned that a Joe /PHOPBT he narrow appeared
12 at the meeting, sort of unannounced?

13 A. Yes.

14 Q. Is that reflected on the third page of the minutes in
15 the middle?

16 A. Yes.

17 Q. Just as a matter of, a general matter, tell us how do
18 these minutes and this get prepared.

19 A. Well, they are prepared by administrative staff, usually
20 by a lady named Michelle Wayne, who would sit at a computer
21 station, and make notes as the meeting progressed, and then
22 they would later be collated with all the official actions
23 that had occurred, and then they would be reviewed often by
24 the officers, and then submitted to the MEC at the following,
25 at the next MEC meeting, usually, for approval, sometimes for

1 edits. But finally for approval.

2 Q. So those are steps to make sure the minutes of the
3 meeting are accurate in terms of what was discussed?

4 A. Yes.

5 Q. Was that the practice throughout the year 2001?

6 A. Yes.

7 Q. All right. Let's walk through a couple aspects of the
8 minutes. Going back to the first page the meeting begins at
9 oh 4, with master chairman Bob Pastore calling the meeting
10 to order. And then on the bottom of that first page
11 bankruptcies/ transaction update, Randy Babbitt, Eclat
12 Consulting.

13 It says he addressed the decision-making process
14 regarding the 1113 bankruptcy hearing and discussed different
15 scenarios that could result from the bankruptcy.

16 Do you recall what Mr. Babbitt said when he gave
17 that presentation?

18 A. The main thing that I recall was his recommendation.
19 And what he recommended was that the MEC merger committee
20 make another effort to meet with the APA merger committee to
21 reach an agreement prior to the 1113 hearing scheduled for
22 April 6.

23 Q. And was that recommendation taken up and considered by
24 the MEC?

25 A. It was considered later that day in executive session by

1 the MEC.

2 Q. And what was the result of the MEC's consideration of
3 that recommendation?

4 A. It was -- there was a motion made to act on it, to send
5 the merger committee back down to Dallas, and the motion
6 failed.

7 Q. All right. And then just to move through this because
8 people have heard about it a couple of times. There was a
9 motion made later in the afternoon, a resolution on the
10 bottom of page 5. Do you have that handy? A resolution 01-
11 64 by Rautenberg and Lewin, five parts, and then there was a
12 roll call vote, and the resolution passed?

13 A. Yes.

14 Q. I want to ask you some questions I asked before about
15 the tone, the tenor of the meeting. Did any advisors,
16 including yourself, tell the members of the MEC how they had
17 to vote?

18 A. No.

19 Q. Did any of advisors make any threats about what might
20 happen at if the MEC did not vote to waive scope and accept
21 the collective bargaining agreement?

22 A. No, nothing like that.

23 Q. Any advisors raise their voices or get physically
24 address aggressive with any of the members of the MEC?

25 A. No.

1 Q. Did any members of the MEC -- I am sorry. Did anybody
2 cut off discussion about any of these issues?

3 A. Well, the discussion was among the members of the MEC.
4 There was very little input from advisors. There were a few
5 questions. There was one question to me but it was not the
6 free- flowing kind of discussion of the Sunday, April 1
7 meeting. It was a day of adherence to Roberts Rules of
8 Order, and the MEC considered things as it always does in
9 session.

10 Q. Did anybody did anybody tell the MEC that it had to
11 decide this issue, any of these issues, on April 5?

12 A. Not that anything had to be decided on April 2, no.

13 Q. Is there any meeting that the meeting could not have
14 continued for a couple more days if people needed more time
15 to consider these issues?

16 A. It could have continued, yes.

17 Q. Did any of the members of the MEC appear to be confused
18 or not to understand what the issues were?

19 A. No, I think they understood.

20 Q. Did you perceive that any pressure was being put on
21 advisors, any pressure being put by advisors on the members
22 of the MEC to do anything in particular?

23 A. I don't, I didn't observe it. I don't know of any
24 pressure applied.

25 Q. Did any members of the MEC complain to you after the

1 meeting that they felt pressured or coerced by anything said
2 by advisors?

3 A. No, no one complained to me.

4 Q. What happened after this meeting on April 2 in terms of
5 moving the process forward, in the sense that a, well, the
6 first part of the resolution at the top there on that second
7 page, page 6, directs the negotiating committee to, quote,
8 "seek clarification immediately on all outstanding issues
9 arising from the proposed agreement covering the operation of
10 TWA LLC."

11 What happened as a result of the adoption of that
12 resolution?

13 A. We scheduled a conference call meeting with TWA for the
14 following day; actually, it was in the evening on the 3rd.

15 Q. Was that a conference call of the negotiating committees
16 of the pilots and of TWA?

17 A. That's correct.

18 Q. Okay. And I want to show you what has been premarked as
19 D 194. Can you tell us what D 194 is?

20 A. This exhibit is an agenda for the April 3rd conference
21 call.

22 Q. Who prepared the agenda, do you know?

23 A. I prepared it with the help of the negotiating
24 committee, Ron Kiel and Alan Altman.

25 Q. And did the conference call actually take place in

1 accordance with the agenda?

2 A. Yes, it did.

3 Q. Did Mr. Altman participate?

4 A. Yes, he did.

5 Q. Who else, on behalf of the negotiating committee,
6 participated?

7 A. Well, it was, of the pilots negotiating committee, it
8 was only Ron Kiel and Alan Altman.

9 MR. FRAM: I move D 194 into evidence, please.

10 MR. JACOBSON: No objection.

11 THE COURT: D 194 in evidence.

12 Q. And were the negotiating committees able to resolve the
13 issues outlined on D 194?

14 A. They were either resolved or we obtained the information
15 that we were looking for, and in some cases were
16 disappointed, but we had taken it as far as we could.

17 Q. I want to hand you what has been marked --

18 THE COURT: Before you go off D 194, a lot of the
19 subjects are identified by a section number, section 3,
20 section 4 F. Do those section numbers relate to the
21 proposed contract between LLC and ALPA?

22 A. They do. But they are the same section numbers that
23 were in existence for the old contract.

24 Q. All right. So I am going to hand you what has been
25 marked as P-139. It is in evidence. And I would ask if you

1 recognize that as the agreement that was ultimately signed as
2 a result of the vote on April 2, 2001, and the negotiating
3 committee meeting on April 3rd, that you just mentioned?

4 A. This is the transition agreement that applied beginning
5 with the closing of the transaction on April -- it actually
6 closed on April 10. We were told that it closed on April 9,
7 so it carries the April 9, 2001 date.

8 Q. You see in the upper right-hand corner --

9 THE COURT: You call this transition agreement but
10 it is really the collective bargaining agreement between ALPA
11 and TWA LLC, which is American.

12 A. Well, its sole purpose, though, is to transition --

13 THE COURT: To a single carrier status.

14 A. But not only that, your Honor, but to the American
15 pilots' CBA.

16 Q. You see in the upper right-hand corner of each page of
17 the document it says March 31, 2001.

18 A. Yes.

19 Q. What relationship does this document have to the
20 document that was emailed to you on the evening of March 31,
21 2001, the day before the work session on April 1?

22 A. It is the same document except that there were, as a
23 result of the April 3rd changes, there were a couple of
24 modifications.

25 Q. And this document is actually signed, if we turn to

1 page, after page 73, the signature page.

2 A. Yes.

3 Q. And it is signed by Mr. Kiel, chairman of the
4 negotiating committee, by Mr. Pastore, the chairman of the
5 MEC, and by Duane Woerth?

6 A. Yes.

7 Q. Did you have any role in getting the document signed?

8 A. Yes. We went, took the document first to Duane Worth's
9 office and of course in the Washington, D.C., and then it was
10 sent to us in Wilmington, Delaware, because we traveled to
11 Wilmington, Delaware, for those final hearings. And then we
12 did a lot of signing for a day or so.

13 Q. Okay. Did you spend some time with Mr. Pastore when you
14 went to Wilmington and Mr. Kiel when you went to Wilmington
15 do get their signatures on the document?

16 A. I did.

17 Q. What was the mood in Wilmington when you were in Mr.
18 Pastore's company with respect to the document?

19 A. Well, it was very festive. He had a big suite at the
20 hotel, and several of the MEC members were there and they
21 were going to have a brief meeting, but very soon the music
22 was turned up, and it was a celebration, really.

23 Q. How many pilots were there for the celebration, sir?

24 A. Probably 30 or 40.

25 Q. And for how long did the celebration go?

1 A. Well, I didn't stay but I think it was a good part of
2 that first evening, which was Wednesday, which would have
3 been the --

4 THE COURT: The 4th.

5 THE WITNESS: The 4th.

6 Q. What were they celebrating, what were they happy
7 about?

8 A. They were happy about becoming American pilots, about
9 being able to transition to the higher pay at American,
10 greater job security. A company that made profits, was not
11 in danger of being liquidated, and of generally having
12 succeeded.

13 Q. All right. Let's jump now to events later in the year.
14 You want to focus you on events of October and November of
15 2001, in particular, discussions about the issue of seniority
16 integration. Do you recall those events fairly clearly?

17 A. Yes.

18 Q. And if you need me to show you an MEC minutes or other
19 documents that will help you remember things, you will let me
20 know.

21 But do you remember some discussions in October
22 leading up to a meeting of the MEC on October 21 and 22, and
23 continuing on the 23, about whether a particular seniority
24 integration proposal should be adopted?

25 A. There were -- I do recall that. I am not sure what the

1 question is.

2 Q. Do you recall, let's take it a step at the time. You
3 recall a proposal being put on the table by American and the
4 APA over seniority integration?

5 A. The first I heard of it was from Keith O'Leary who had
6 succeeded Scott Schwartz as the vice chairman. And Keith
7 O'Leary told me that he and Bob Pastore had met with Bill
8 Compton the previous day, the previous day being the Thursday
9 before Columbus Day observed. And that Keith O'Leary said it
10 appeared to him that there was a deal available --

11 MR. JACOBSON: Objection, your Honor. I think he is
12 get to go hearsay at this point.

13 MR. FRAM: Your Honor, I am trying to lay some
14 foundation for some advice he gave.

15 THE COURT: I will allow it. Go ahead.

16 A. So Keith O'Leary thought that there was a deal
17 available. He told me that on the Friday before the Columbus
18 Day observed, and there was a, I believe an MEC meeting I
19 think the Tuesday after Columbus Day, and the issue was
20 whether the merger committee and Roland Wilder should travel
21 to American headquarters to meet first with American and then
22 possibly with the APA.

23 Q. Okay. And the upshot of that is that Mr. Pastore went
24 by himself and no agreement was reached?

25 A. That's correct.

1 Q. This do you recall the October 12 letter from Mr.
2 Brundage expressing frustration about what had happened?

3 A. I do.

4 Q. All right. Do you recall the meeting on October 21, 22,
5 and 23, where efforts were made by the pilots, the TWA
6 pilots, to reach agreement on what should be done in response
7 to a proposal, a seniority integration proposal??

8 A. Yes.

9 Q. Okay. Focusing just on the merger committee, to your
10 recollection, were the members of the merger committee able
11 to agree among them? Selves about what to do in response to
12 the new proposal?

13 A. No, they were not.

14 Q. Tell us about the disagreements that you observed.

15 A. The members, merger committee members present were Mike
16 Day, John Swanson, Sean Clarke, and DJ Glasby. And Mr.
17 Glasby I think was, came on the negotiating go -- excuse me
18 on the merger committee after Gary Flor left the merger
19 committee. John Hefley was not present. Bud Bensel I think
20 was still a member of the merger committee, but he really, I
21 don't see him participate in it.

22 But it was basically Mike Day and John Swanson
23 being open to what was on the table and favoring what was on
24 the table. DJ Glasby was a bit torn. And Sean Clarke was
25 very much against accepting the proposal.

1 Q. And what --

2 THE COURT: The proposal had radically different
3 effects, depending on the seniority, right?

4 A. That's correct.

5 THE COURT: I mean senior TWA pilots came out okay.
6 Maybe not as well as they could have, but they came out
7 pretty well, while the junior pilots, the younger, really
8 which was Clarke --

9 A. Sean Clarke was a junior, yes.

10 THE COURT: And he was the most junior of any?

11 THE WITNESS: That's right.

12 THE COURT: And he gets no benefit from it.

13 THE WITNESS: Right. In his view there was -- in
14 his view, every member should vote with him because he was
15 hurt.

16 Q. All right. So there seemed to be a correlation between
17 level of seniority and the position people were taking on the
18 merger committee?

19 A. Yes.

20 Q. The proposal at this point of course involves stapling a
21 significant number of the TWA pilots?

22 A. Yes.

23 Q. And how about the TWA MEC as a whole? Were they
24 involved in discussions about the proposal that was on the
25 table?

1 A. They had several days of discussions, yes.

2 Q. Okay. There were disagreements among the members of the
3 TWA MEC about whether it was a good idea to accept this
4 proposal?

5 A. Yes, there was disagreement.

6 Q. Can you describe briefly for us who the players were,
7 what their positions were, about whether this was the deal
8 you would get stuck with?

9 A. Well, Steve Rautenberg, and Pablo Lewin were in favor of
10 accepting the offer, and most of the others were opposed.
11 There may have been some nuances in their positions, but they
12 were generally opposed. That would conclude Sally Young, Ted
13 Case and Howard Hollander.

14 Q. Tell us what, the people both on the merger committee
15 and on the MEC level who were in favor of accepting the
16 proposal, what were their argument, what were they saying
17 about why this was a good idea, if that sense?

18 A. Well, the arguments in favor related to items that were
19 not the integration, per se. In other words, not the actual
20 combining of the list, that other agreements that would go
21 with the seniority agreement. One of the items on the table
22 would be a promise by American that the St. Louis domicile,
23 where most of the TWA pilots would fly out of, would not be
24 -- that flying there would not be decreased by more than 25
25 percent of their combined flying of St. Louis, Chicago, and

1 Dallas.

2 And the proponents of making the deal saw value
3 there. And there were other parts of what was on the table,
4 but they also saw value to.

5 Q. How about the opponents, the people not in favor of
6 accepting the deal, what were their arguments about why the
7 deal should not be accepted, and how it was accepted, the
8 issue of seniority integration would be resolved?

9 A. Well, they would still, the opponent thought that it
10 should be resolved by Congress acting on what was called the
11 Bond Amendment, which was a proposal by Senator Kit Bond,
12 that initially would have a retroactive effect to provide
13 arbitration between the dispute between the APA and the TWA
14 MEC.

15 Q. Did they have a backup plan, if Congress did not adopt
16 the Bond bill and solve this problem for them?

17 A. I really didn't hear any backup plan.

18 Q. Did you have views about whether the Bond bill was
19 likely to be adopted?

20 MR. JACOBSON: Objection, your Honor. Calls for an
21 opinion from a witness.

22 THE COURT: I will sustain that.

23 Q. Did you express your views to the members of the merger
24 committee and the members of the members of the MEC about
25 what they should do in terms of accepting or not accepting

1 the proposal that was on the table?

2 A. I, at the same time that Roland Wilder made his
3 recommendation, I also was recommending that the MEC accept
4 the proposal that was on the table, which had components of
5 the merger integration, and also consideration that American
6 Airlines would provide.

7 Q. What was your thinking in making that recommendation?

8 A. Well, my thinking was that the, there was unlikely to be
9 relief from Congress, and that American Airlines was going an
10 extra mile to try to bring the parties together, and that you
11 can only, you can only push so far and so long before things
12 are going to start getting worse instead of better.

13 So that this was the time to make the best deal
14 that they could.

15 Q. What about, guys like Sean Clarke who were junior, what
16 did you think, if anything, could you done for the most
17 junior pilots?

18 A. There really wasn't a lot, there really wasn't a lot on
19 the table for the people who were the most junior. Except
20 that American was willing to say that in the fourth quarter
21 of 2001 and the first quarter of 2002 the number of
22 furloughs, because of course this was after 9-11, the number
23 of furloughs I think would be 200 in the fourth quarter and
24 250 in the first quarter, if I have it correctly, or it could
25 be reversed, but I believe I have it correctly.

1 Q. I think you mentioned a moment ago that Roland Wilder
2 had a recommendation with respect to the proposal as well?

3 A. Yes.

4 Q. Tell us what that was?

5 A. Well, his recommendation was also to accept the deal.

6 Q. Do you recall him suggesting that a lawsuit be filed at
7 some point?

8 A. He had suggested that a lawsuit be filed earlier, yes.

9 Q. And was there interest -- well, what was your reaction
10 to the idea of the lawsuit?

11 A. Well, this particular lawsuit I thought had less merit
12 than the others.

13 Q. And do you recall what the lawsuit proposal was, who he
14 would be suing, what the claims would be?

15 A. Well, he would be suing to enjoin either the adoption of
16 an agreement of the merger list between American and the APA,
17 or possibly attempting to foreclose the National Mediation
18 Board from acting on a single carrier application.

19 I heard both versions of that. I am not sure which
20 version was Roland Wilder's actual proposal.

21 Q. And what was your, why did you believe that either
22 version was not something that you would be that you would
23 pursue?

24 A. There was, the fact that these events would be fairly
25 far off in the future and there was the fact that under the

1 law there might not be irreparable harm to meet the standard
2 for injunctive relief.

3 Q. When discussing these issues with TWA pilots and merger
4 committee, and the MEC, did you see any virtue to having
5 assigned agreement that the TWA pilots had signed as opposed
6 to having an agreement just imposed by American and the APA?

7 A. Yes. There was a virtue in a signing agreement, there
8 was a virtue in the negotiation of it, that if our merger
9 committee, the TWA MEC merger committee could have used their
10 willingness to agree for a little bit more, probably not very
11 much, but for a little bit more, and there was what I said
12 before, which was if you don't have a signed agreement,
13 things could get worse instead of better.

14 Q. Explain what you mean by things getting worse?

15 A. Well, as we said before, the agreement between American
16 and, and, between American and the APA allowed that the
17 seniority date of a new pilot would be date that that pilot
18 is hired by American.

19 So theoretically, and I emphasize theoretically,,
20 even TWA pilot could be put at the end of the list. But in
21 any case, even if not so drastic, it could be worse than what
22 was offered.

23 Q. All right. Did you become familiar with Supplement CC
24 when it when it was ultimately adopted by American and the
25 APA?

1 A. Somewhat, yes.

2 Q. Let me show you what is in evidence as J 352.

3 What I would like you to do is just to talk to us a
4 little bit about some of the benefits of the document, other
5 than the fact that pilots did not get, all the pilots, did
6 not get stapled. Do you recall the protective cell aspect of
7 Supplement CC?

8 MR. JACOBSON: Your Honor, I am going to object to
9 the leading nature of the question. The witness already
10 said he had some vague passing familiarity with Supplement
11 CC.

12 THE COURT: I will sustain the objection.

13 MR. FRAM: I will do there with a different
14 witness. That is fine.

15 THE COURT: It is in evidence. You can make
16 closing argument.

17 MR. FRAM: That is fine.

18 THE COURT: I don't know that he fully knows the
19 comparison between that document and what was offered, the
20 offer that was turned down.

21 MR. FRAM: I think he does.

22 Q. Mr. Holtzman --

23 THE COURT: Ask him that question.

24 Q. Are you familiar with the differences between the
25 proposal that was on the table before Supplement CC was

1 adopted and Supplement CC itself?

2 A. In a couple of particulars that are, that I think are
3 important, yes.

4 Q. Do why don't you tell us about those, differences and
5 why they are important and we will wrap up.

6 A. The provision that was on the table from American would
7 have given furlough protection for the, for those TWA pilots
8 on the American list who were integrated into the list, not
9 to, not the stapled portion but the upper portion. They
10 would have had no furlough protections as offered by
11 American. American didn't offer that in CC.

12 THE COURT: Did it ever make a difference?

13 THE WITNESS: Yeah. Unfortunately.

14 Q. You said American didn't offer that. You mean it didn't
15 impose that in Supplement CC?

16 A. Well, it would have and welcome imposition, but it was
17 not in CC.

18 Q. Okay. There are were there other ways which in your
19 view in which Supplement CC was less favorable to the TWA
20 pilots than what had been offered?

21 A. The CC has, as I understand it, a guarantee --

22 MR. JACOBSON: Objection, your Honor. From his
23 phrasing, it is clear that he is relying on hearsay, not
24 personal knowledge.

25 THE COURT: You reviewed the document, didn't you,

1 CC?

2 THE WITNESS: Yes.

3 THE COURT: I will allow this.

4 A. The document has a guarantee of a number of captain's
5 positions for the St. Louis cell.

6 The proposal that was on the table had a floor, I
7 think I described earlier, of 25 percent of the combined --
8 there could be no decrease in flying greater than 25 percent
9 of the combined domiciles of Chicago, Dallas and St. Louis.
10 And that is viewed as more favorable than what was agreed to
11 by APA and American and Supplement CC.

12 Q. Are those the importance ways in which you recall
13 Supplement CC was less favorable than the deal that had been
14 on the table?

15 A. Yes.

16 THE COURT: In terms of the number of pilots
17 stapled, though, that didn't change.

18 A. That did not change.

19 Q. Throughout, and by the way, the advice that you gave to
20 the merger committee and the MEC that they should accept this
21 proposal and not have something in code. That advice was
22 rejected, yes?

23 A. That's right.

24 Q. Throughout the course of 2001 when you were advising the
25 TWA MEC, did anybody from ALPA National tell you what advisor

1 direction to give to the TWA MEC?

2 A. No, no one did that.

3 Q. Were you aware as of late 2000 that ALPA had adopted the
4 so-called unity resolution, and had expressed an interest in
5 bringing some independent pilot unions into ALPA?

6 A. I wasn't really aware of the resolution. I was aware
7 that there was an interest in organizing the independent
8 union.

9 Q. Were you aware as of late 2000 that there was an
10 interest on the part of ALPA National in trying to bring the
11 American pilots back?

12 A. Yes.

13 Q. Did that interest, that interest the part of ALPA
14 National, did that in any way, shape or form affect the
15 advice or guidance that you gave to the TWA MEC?

16 A. No, it didn't affect my advice.

17 MR. FRAM: I have nothing further on direct.

18 Thank you, your Honor.

19 THE COURT: We will take a 15-minute break now.

20 Then we will resume with cross. Mr. Jacobson, you
21 are going to do the cross?

22 MR. JACOBSON: Yes.

23 THE COURT: We will pick up with your cross
24 examination at 10 of 12.

25 All rise when the jury leaves.

1 (The jury leaves the courtroom.)

2 THE COURT: Counsel, the jury, one of the jurors
3 inquired of Mr. Bruey as to how much more, what the future of
4 this lawsuit is. Do you have any sense after, this is the
5 most, I don't want to be, I think we will finish him today.
6 What comes after that?

7 MR. FRAM: Your Honor, we have Mr. Warner. We have
8 Mr. Rosen.

9 THE COURT: Seth Rosen.

10 MR. FRAM: Seth Rosen.

11 THE COURT: Seth Rosen is going to be live.

12 MR. FRAM: Seth Rosen live.

13 THE COURT: I don't have to worry about the
14 deposition.

15 MR. FRAM: Richard Seltzer, and that is it.

16 THE COURT: You have three more witnesses.

17 MR. FRAM: Yes, your Honor. We are hoping to
18 finish them if not on Tuesday, probably unlikely, more likely
19 Wednesday. We hope to be done with the testimony by
20 Wednesday.

21 MR. KATZ: Possibly some video.

22 MR. FRAM: Possibly a video. Your Honor gave us
23 some preliminary rulings.

24 THE COURT: No, I am not prepared, notwithstanding
25 my concern with the stipulation, such as it was. I find

1 that, I am reluctant to let either of the two depositions,
2 Babbitt and the TWA chairman.

3 MR. KATZ: Compton.

4 THE COURT: Compton. Which was before the Senate.
5 All right.

6 MR. FRAM: We are inclined not to pursue Compton at
7 all. But there are some portions of Babbitt that were not
8 objected to that we may play.

9 THE COURT: It was sort of offered in gross. What
10 I had, what I was reviewing was large segments, and then
11 large objections to those segments. You know.

12 MR. FRAM: That is our goal, your Honor. I think
13 in terms of prediction, I think we are reasonably expecting
14 to be done with our case by the end of the day on Wednesday.
15 Of course we are off Monday.

16 THE COURT: July 6.

17 MR. FRAM: July 6, your Honor.

18 THE COURT: Okay.

19 MR. JACOBSON: All three witnesses you think you can
20 get done in one day.

21 MR. FRAM: No, two days. Tuesday and Wednesday.

22 THE COURT: In terms of rebuttal, what do you --

23 MR. JACOBSON: We are going to revisit the Sherry
24 Cooper deposition as rebuttal.

25 THE COURT: I would love in a way to have her. But

1 I would like to have her here. The absence of cross
2 examination very much troubles me on Cooper.

3 MR. PRESS: I thought she was crossed.

4 MR. JACOBSON: She was crossed in deposition.

5 THE COURT: That is a discovery deposition. You
6 don't cross examine your own witness.

7 MS. RODRIGUEZ: We can try calling her again. I
8 don't think that the result is going to be different. We can
9 try to see if somebody can reach out to her again.

10 THE COURT: Try that. Normally, in a discovery
11 deposition, you don't cross examine your own witnesses, the
12 person is taking the other side's deposition, the other
13 side's witness. You don't cross examine your own witness.

14 MR. JACOBSON: Your Honor, that is not the
15 circumstance here. If I am not mistaken, we took the
16 deposition, didn't we, for Sherry Cooper.

17 MS. RODRIGUEZ: She was never a defendant's
18 witness.

19 MR. JACOBSON: They had an opportunity to cross her
20 at that time.

21 THE COURT: It was --

22 MS. RODRIGUEZ: She was never on their disclosure
23 list as a potential witness.

24 THE COURT: I know. That is why I take issue with
25 the great minds of the Rules Committee about the de bene esse

1 deps and the discovery deps.

2 All right. I will let, we will go back over it.

3 MR. FRAM: Your Honor.

4 THE COURT: Looking at it from the other point of
5 view, there has been a fair amount of testimony as to the bad
6 condition of TWA.

7 I am not inclined to foreclose you, the testimony
8 is not the kind that has the additional reliability, because
9 it is not subject to cross. Let me think about it. See if
10 you can reach out and get her here.

11 MR. JACOBSON: We will.

12 MS. RODRIGUEZ: I will try.

13 MR. JACOBSON: She will be as charming as she can
14 be.

15 THE COURT: That is considerable.

16 But other than Ms. Cooper's testimony, what,
17 whether live or by deposition or otherwise.

18 MR. JACOBSON: We need to talk about it. We need
19 to talk.

20 THE COURT: Okay. At the moment, all you know
21 about is Cooper. You may come up with something.

22 MS. RODRIGUEZ: That is the only one we can
23 identify for certain today.

24 MR. PRESS: I can tell you right now a concern of
25 mine is you struck our expert witness. We talked about this

1 at the pretrial, Judge, we may, depending how the defendant's
2 case come in, we may want to offer as rebuttal witness. If
3 we keep getting legal opinions from lawyers from the witness
4 stand, we are going to want to bring our labor expert in.

5 THE COURT: To testify to what?

6 MR. PRESS: To testify that what they are saying is
7 wrong. Or at least questionable. I don't know. We have to
8 talk.

9 THE COURT: Well, there is a difference between a
10 lawyer getting on and giving legal advice from the stand, and
11 a statement as to what advice was given to members of the
12 MEC. The advice they were receiving or the merger committee
13 and the negotiating committee, three different groups there,
14 the advice they were receiving is relevant, whether it is
15 wrong or right or, it is relevant to --

16 MR. PRESS: If I may, I heard Mr. Holtzman give two
17 legal opinions. I agree with what you said, but despite
18 that, he said the automatic stay would have precluded the
19 March litigation strategy and he said the October strategy
20 had less merit than the March strategy. He said both of
21 those things.

22 Again, they got three more lawyers that are going
23 to testify.

24 THE COURT: Well, maybe it will go -- I am not
25 convinced that we have a problem that we have a problem that

1 the jury might be confused at the moment. Maybe with three
2 more lawyers.

3 MR. PRESS: Or if we control their testimony in a
4 way that prevents them from giving legal opinions.

5 MR. FRAM: We are not trying a legal malpractice
6 case here, where they want to say it is not adequate advice.
7 Unless they can show the advice was so far beyond the pale, I
8 don't know why we get into this.

9 MS. RODRIGUEZ: Your Honor --

10 MR. FRAM: If I may, Lisa. The advisors gave
11 advice based upon their legal acknowledgement, we all know
12 from pretrial and the prior proceedings that they are going
13 to explain the basis for their opinion to show that they
14 acted in good faith.

15 I don't know how having a lawyer come in who wasn't
16 involved is going to help. I think your Honor has previously
17 commented, at least, that there are legal issues here that
18 some of them are ones that the Court should be deciding. I
19 know you have written opinions before, your Honor, that have
20 held that expert testimony on issues of law is not
21 appropriate. That is well settled.

22 THE COURT: In most cases. There are exceptions.

23 MS. RODRIGUEZ: Your Honor, this is a different
24 issue, however. You have got witnesses, lawyers, who have
25 gotten up and opined, for instance and I think the most

1 compelling argument is people getting up and saying Roland
2 Wilder's litigation strategy is, one after another, Roland
3 Wilder's litigation strategies were meritless.

4 THE COURT: Yeah, but look, first, there is no
5 question in my mind as a legal matter that the first of his
6 strategies was to have the district court bypass the
7 bankruptcy court on a minor dispute doctrine. At the very
8 aleast, he has a rough road to hoe in that one. Certainly.
9 I don't know how it would come out. I don't know how a Judge
10 would have dealt with it. But it is a tough issue. But that
11 doesn't, that is not proof of, that they went in attack --

12 MS. RODRIGUEZ: There is a difference, your Honor,
13 between a rough row to hoe and what the suggestion has been
14 from several of the witnesses, that it bordered on the
15 frivolous. They have gotten up there and opined continuously
16 about, of the total lack of merit of any of Roland Wilder, a
17 respected, one of the most long term labor lawyers in this
18 country, they have gotten up there and opined that it was
19 bordering on the frivolous, people said, and that is not
20 questioning the legal advice that Richard Seltzer gave. That
21 is just having some redirect on, you know what, it really
22 wasn't as clearcut as they would have you believe, sitting
23 here today, when the pilots were in this fight for trying to
24 get some leverage, to get the ball rolling.

25 MR. FRAM: Your Honor, if I may. We briefed this

1 issue as you recall, our trial brief outlines our legal
2 basis for arguing that Roland Wilder was dead wrong, and
3 again we would ask the Court to rule on that as a matter of
4 law. I don't know how having an outside lawyer who wasn't
5 involved come in and try to argue that is admissible or
6 helpful. If there was a reasonable disagreement among
7 advisors --

8 THE COURT: Nobody is calling Roland Wilder. Is he
9 alive?

10 MS. RODRIGUEZ: He is alive.

11 THE COURT: No one is calling Roland Wilder.

12 MS. RODRIGUEZ: He had his video.

13 MR. PRESS: He wants to remain neutral. He wants
14 to maintain his neutrality. He is not testifying for either
15 party.

16 MS. RODRIGUEZ: We had his video deposition, your
17 Honor, hours of the video deposition where he went through
18 his strategies. He is not willing to commit to one side or
19 the other.

20 THE COURT: Okay.

21 MR. FRAM: Your Honor, our point is that the fact
22 that there was a dispute between lawyers about what to do
23 doesn't help them prove bad faith. Wilder had an idea, our
24 people disagreed. We happened to think we were right and it
25 was frivolous but the fact of the matter is --

1 THE COURT: No, but when you start opining, I guess
2 the problem is, hasn't been, it wasn't too bad, maybe it was
3 neutral -- not neutral. He wasn't flamboyant. But if you
4 go, if you get into the record that Wilder's ideas were hair-
5 brained, and they are denied the opportunity to do that, the
6 next bunch of lawyers -- Warner is a lawyer.

7 MR. FRAM: Rosen.

8 MR. JACOBSON: Rosen, and Seltzer is a lawyer.

9 MR. FRAM: Seltzer, your Honor, I tell you right
10 now, Seltzer, in the deposition he, they know this,
11 characterized Wilder's litigation theory as irresponsible and
12 as a misreading of the Ionosphere case. And that will be his
13 testimony. They know that.

14 This case is not about trying to save Roland
15 Wilder's reputation and prove that he was not off the wall.
16 The fact of the matter is that even if there had been a
17 reasonable basis for his theory, the advice was don't take
18 the chance. Don't take the chance with this bankruptcy
19 Judge. Don't take the chance with the American, and there is
20 no basis, I think we have argued this already in the Rule 50
21 motion, even if there was a basis for disagreement among
22 reasonable people, there is no basis for arguing bad faith.
23 That is the issue in the case.

24 MS. RODRIGUEZ: Your Honor, it is a multi -- you
25 don't go from A to B. It is a multi step, it is a

1 progression.

2 But you have got, and the basis of your Honor's
3 decision barring our expert reports was that legal analysis
4 was not the province for an expert.

5 THE COURT: It isn't.

6 MS. RODRIGUEZ: And I agree. Except when you have
7 got, for instance, now Seltzer, a bankruptcy lawyer, going on
8 the stand and saying, as Mr. Fram just said, bordered on the
9 frivolous.

10 THE COURT: If Wilder wanted to defend his own
11 advice, really, that is one thing. If he wants to come to
12 court and defend it. But to have just a, they are not
13 offering expert for their advice, they are just having a
14 witness review the, say the advice I gave.

15 MR. JACOBSON: But each comes in and goes beyond
16 that. They take on their expert hat here.

17 THE COURT: No, none of them said I think the
18 advice I gave is wrong. They say this is the advice I gave
19 and obviously they think it was right.

20 MR. FRAM: And they will explain why it was right,
21 they will explain the due diligence and the everything they
22 do you expect lawyers to do when you have a high stakes
23 issue. They should be permitted to do that so we can rebut
24 the suggestion that they acted in bad faith, that they didn't
25 do their jobs as responsible professionals.

1 These people, your Honor, as you might imagine,
2 they were offended by the idea that their legal advice was
3 somehow skewed because of this bigger long-term goal on
4 behalf of ALPA.

5 And Mr. Seltzer and Mr. Warner, they will walk you
6 through the memos, they will walk through the notes. They
7 absolutely are entitled to explain to the jury why they
8 thought they were right and why their advice was right and
9 why they thought Wilder was wrong.

10 THE COURT: And Wilder would be entitled to that
11 same --

12 MR. FRAM: Bring them on. We wish they could put
13 Wilder on the stand and I would relish the opportunity to
14 cross examine him.

15 They had that opportunity to make that record in
16 his videotape deposition. If you recall, they didn't ask
17 Wilder to try to justify his litigation theories. Indeed,
18 one of them, your Honor, one of the theories going and suing
19 the APA and American.

20 THE COURT: One of his points also that he could
21 defend is that maybe it was a weak case, and it only had a 30
22 percent chance of success, but it would create delay and put
23 pressure, a lot of his talk, indeed a lot of Wilder's own
24 discussion was to get leverage, you have to get leverage,
25 something that they are afraid of, even if there is a 20

1 percent chance or 30 percent chance of success, that could
2 create leverage. It would have to 100 percent, I mean 100
3 percent or 90 percent. Even if it is 20 percent likely. But
4 he could say that.

5 MR. FRAM: Yes.

6 THE COURT: Not some expert.

7 MR. FRAM: Precisely.

8 THE COURT: I mean, in a sense, I have already made
9 the ruling that his litigation, but that his litigation, not
10 one of them, was such assure, slam bang winner, that, or even
11 a 50 percent winner, that, you know, irresponsible, you know,
12 not to follow it.

13 On the other hand, that is different. Let's face
14 the real world of litigation. People bring multi million
15 dollars class actions with probably a 15 percent chance of
16 winning them, and it costs a lot of money. Don't they, Ms.
17 Rodriguez?

18 MS. RODRIGUEZ: Sometimes, your Honor.

19 THE COURT: And you know, I wish it were that no
20 lawyer brought a suit unless there was a 50 percent chance of
21 winning it. But let's face it. That just isn't the face.
22 Lawyers bring suit for lots of tactical reasons. But Wilder
23 is the one who has to explain that. He could explain it.
24 And even things like his views of timing. Nobody has really
25 gotten into very much what the effect of a lawsuit, even a

1 lawsuit that is relatively weak, as long as it is one that
2 can pass the Rule 11 threshold.

3 You know, what effect that would have on the file
4 timing, whether that would -- well, that is a reason I would
5 like Ms. Cooper.

6 Ms. Cooper very definitely inserts the trophy, a
7 trophy testimony. She does it very deftly but we don't know,
8 we have no idea who said it, was it American, was or the
9 circumstances, was it sarcastic, was it mocking TWA's
10 inflated sense of its own importance. I don't know. That is
11 why I would love to have her here, because I think she could
12 give some testimony that, not just American says it was
13 trophy, she every even refers to it as the trophy issue and
14 it is not relevant to her testimony, so she is very at
15 putting it in, but then, you know, it is like hearsay on
16 hearsay.

17 I don't know where she heard that, from somebody at
18 American, who at American, whether she heard it from American
19 TWA person who said he heard it or she heard it from
20 somebody. I have no idea. And yet if she really does have
21 some testimony about American's attitude towards the
22 acquisition, that is relevant.

23 MR. FRAM: Your Honor, if I may?

24 THE COURT: I was offended by the deftness with
25 which she threw it in. I think she knew exactly what she was

1 doing when she did it.

2 MR. JACOBSON: My recollection, it is unclear right
3 now, was in her deposition she said that that was a phrase
4 that Compton said at the initial -- when he introduced them,
5 that is what American was calling it. It was via Compton.
6 That is my recollection. I am not 100 percent on that.

7 THE COURT: I didn't read that. I don't remember
8 that. I know she used the phrase, she even used it when it
9 wasn't relevant to what the answer was she was giving. So I
10 mean she knew what she was doing. It was very deftly put in
11 to make it -- but that doesn't mean it is not relevant. In
12 some fashion.

13 That is why I would really like her here where she
14 could testify to that.

15 MR. FRAM: If plaintiffs are going to request your
16 Honor reconsider the issue of expert testimony, we would ask
17 for a Rule 104 hearing, if they are going to try to bring
18 somebody in.

19 THE COURT: I haven't said I would consider that.

20 MR. FRAM: That is what they are requesting in
21 terms of this issue --

22 THE COURT: They will have to make a formal motion
23 for that.

24 MR. FRAM: Okay.

25 THE COURT: The testimony by an expert that

1 Wilder's theories were good, I don't think is proper expert
2 testimony.

3 MR. FRAM: Thank you, your Honor.

4 THE COURT: But I would let Wilder defend, because
5 I think there is a lot more to the question of a fine lawsuit
6 than just is it a good lawsuit or a bad lawsuit, is it a 30
7 percent or 70 percent, and he could testify as to that.

8 MR. FRAM: There would be no objection, your Honor,
9 to Mr. Wilder coming in and testifying.

10 THE COURT: But just having, ditching the guy, not
11 using the guy who gave the testimony and then calling in some
12 expert to give an abstract opinion as to whether the minor
13 dispute doctrine, I don't think is proper testimony.

14 All right. Let's take five minutes.

15 (Recess)

16 (Jury enters the courtroom.)

17 DAVID HOLTZMAN, resumes.

18 THE COURT: Ladies and gentlemen, I am sorry for
19 the longer break this time. I was making some inquiry as to
20 how long things are going to, what the future is, because I
21 know there are some jurors who are concerned with that. And
22 I will report to you at end of the day before you leave where
23 I think we stand.

24 Okay. But that is what I was doing for most of the
25 quote break, it wasn't a break out here. For most of your

1 break.

2 Okay. Mr. Jacobson, I understand you are going to
3 conduct the cross.

4 MR. JACOBSON: Yes, your Honor.

5 THE COURT: Okay.

6 MR. JACOBSON: For the benefit of the court reporter
7 I will try to speak more slowly.

8 THE COURT: By the way, I don't know that you have
9 any idea what a phenomenal job this court reporter has done
10 by herself. Usually in a trial this long we have two or
11 three reporters. And she has done it by herself, and she
12 has done an absolutely marvelous job quietly, efficiently,
13 and I want to recognize that.

14 Mr. Jacobson.

15 MR. JACOBSON: Thank you, your Honor.

16 Q. Mr. Holtzman, I would like to start if I could at the
17 end of your relationship with the TWA pilots, the former TWA
18 pilots at that point. Do you recall when the National
19 Mediation Board issued its single carrier ruling?

20 A. Yes.

21 Q. What day was that, sir?

22 A. It was the first week in April.

23 Q. The first week in April??

24 A. Of 2002.

25 Q. Of 2002.

1 Q. All right. And at that time?

2 THE COURT: Actually that isn't the date. I think
3 it is March. I think it is March 5, 2002. 2002 is the date
4 that the NMB declared that they had single carrier status.

5 THE WITNESS: That's correct.

6 MR. JACOBSON: Your Honor, I agree. I was just
7 asking Mr. Holtzman --

8 THE COURT: I don't want to testify, but I think
9 that is the date that really isn't in dispute.

10 MR. JACOBSON: That's correct, your Honor.

11 I was asking Mr. Holtzman because he seems to have
12 such a remarkable memory.

13 Q. Now, on that day, when you stopped being, you being
14 ALPA, stopped being the exclusive bargaining agent for the
15 former TWA pilots, do you recall that? That is what
16 happens?

17 A. I recall that, yes.

18 Q. All right. And that means that there is no longer a TWA
19 MEC, correct?

20 A. Well, that is a union bylaw question. It makes sense,
21 but I don't know that for certainty.

22 Q. Well, you do know for certainty that all the locks on
23 the office at Westport were changed, correct?

24 A. Yes.

25 Q. So that the various MEC officers and representatives

1 couldn't get into the space any more?

2 A. Well, they were able to get in to get their things.

3 Q. Isn't it a fact they were not allowed in to get their
4 things?

5 A. No, that is not a fact.

6 Q. That is not a fact. All right. Isn't it a fact that
7 all of their records and notes and personal possessions were
8 still in the office?

9 MR. FRAM: Your Honor, I object. First of all, we
10 are beyond the scope.

11 THE COURT: Well, I don't -- I am going to allow --
12 I will overrule that objection.

13 MR. FRAM: What is the relevance? What control
14 does this witness have over any of that?

15 THE COURT: I don't know where it is. The fact
16 that they became a nonrepresentative, that, the union with
17 the exclusive bargaining agent changed, and was now allied
18 with APA rather than ALPA, is relevant. I am going to allow
19 to it agree. I am not --

20 MR. JACOBSON: I am not going to spend a lot of time
21 on it, your Honor.

22 Q. You are basically the top person in the office of the
23 staff, correct?

24 A. I wasn't the, I wasn't the top person by supervision. I
25 was the top person by the seniority of the position in terms

1 of it being a professional position.

2 Q. You had the corner office in the suite, correct?

3 A. That's right.

4 Q. And you supervised and organized the packing up of all
5 the things that had been the TWA MEC?

6 A. I did not supervise, no.

7 Q. You directed the office manager under your direction to
8 pack up boxes of all the documents, all the notes, everything
9 else, right?

10 A. No, she did not work under my direction.

11 Q. All right. Do you know that hundreds of boxes of
12 documents were packed up in that location, correct?

13 A. Many boxes were boxed up.

14 Q. Were hundreds of boxes of documents packed up?

15 A. If I said hundreds before, I am not sure if I was
16 correct. But it was many, many boxes.

17 Q. All right. And they are all shipped to a place called
18 Iron Mountain, right?

19 MR. FRAM: Your Honor, I object.

20 THE COURT: Yes.

21 MR. FRAM: May we see your Honor at sidebar. Or
22 that is fine.

23 THE COURT: Where is this going?

24 MR. JACOBSON: I am going to explain why there is an
25 absence of certain documents here. I am not casting blame

1 for it.

2 THE COURT: No. Go to another area. Go to another
3 area. Jack.

4 MR. JACOBSON: All right. Your Honor. I
5 understand.

6 Q. Let's move now to the beginning of this situation, a
7 little before the American Airlines proposal was mentioned.
8 And there was something called a stand-alone plan, correct?
9 That was being worked on?

10 A. The company had --

11 Q. That could be a yes or no, sir?

12 A. Yes, the company had a stand-alone.

13 Q. You were involved with the negotiating committee on
14 working out the terms of that stand-alone?

15 A. No.

16 Q. You were not involved with the negotiating committee in
17 negotiating with TWA, Inc., regarding how ALPA would
18 participate in the stand-alone plan?

19 A. Any problem is with the stand-alone plan, we did
20 negotiate with the company.

21 Q. Say that again. I didn't understand what you said.

22 A. We were not involved in what was called the stand-alone
23 plan. However, we did negotiate with the company during that
24 period.

25 Q. All right. Let me give you what has been marked --

1 THE COURT: The stand-alone plan involves the
2 potential of unions making concessions to create, in effect,
3 to create money, capital, for operating expenses for the
4 airlines, right that was, in fact, that was not the only
5 factor but it was one of the factors.

6 A. The company did not come to us and say this is a
7 stand-alone plan. They came to us for our concessions for
8 short term survival.

9 THE COURT: And you --

10 A. And we engaged them.

11 THE COURT: And you engaged them in discussions in
12 which you were involved in over how much of a concession the
13 pilots would make.

14 THE WITNESS: Yes.

15 Q. And the company came to you and said they wanted to get
16 savings of approximately 100 million dollars per year.
17 Correct?

18 A. No.

19 Q. And they said they wanted to get savings from the TWA
20 pilots of approximately 16 million dollars per year,
21 correct?

22 A. The 16 million figure is correct.

23 Q. Let me show you what has been marked as exhibit P-166.
24 Do you have that before you, sir.

25 A. Yes.

1 Q. And that is a memo from you that covers an email from
2 you?

3 A. Yes. An email from me, yes.

4 Q. And your email is forwarding to Barbara Flynn an email
5 you got from stand Henderson, correct?

6 A. Yes.

7 Q. Stand Henderson is executive at TWA, Inc.?

8 A. Yes.

9 Q. All right. He was the point man on the stand-alone plan
10 negotiations?

11 A. He was a point person from these negotiations, correct.

12 Q. And he is forwarding you a document, I will offer
13 exhibit, is this P-166?

14 MR. FRAM: No objection, your Honor.

15 THE COURT: No objection, P-166 in evidence.

16 Q. Now, you recall that at this point, and this email is
17 December 5, 2000, sir?

18 A. Yes.

19 Q. You recall at this point you had been in discussions and
20 negotiations regarding the concessions that TWA wanted from
21 ALPA for several weeks?

22 A. Yes.

23 Q. And in fact, there were a document known as a term sheet
24 that was being exchanged back and forth between ALPA and TWA?

25 A. Yes.

1 Q. And this letter from Mr. Henderson was forwarding you
2 the 11 version of the term sheet, correct?

3 Q. You can see in the middle of that page it says term
4 sheet 11 dot DOC is attached?

5 A. I see that.

6 Q. As each new version came along the number was
7 incremented up, correct?

8 A. I believe so, yes.

9 Q. Now, you had phone conversations with Mr. Henderson
10 regarding this stand-alone plan as well, correct?

11 A. Yes.

12 Q. Up to this point, up to December 5, one of the main
13 concerns, difficulties in putting the plan together was the
14 reluctance of the IAM, the International Association of
15 Machinists, to participate in the plan, correct?

16 A. It was one of TWA's problems, yes.

17 Q. And now if we turn to the second paragraph of the
18 incorporated email. Mr. Henderson tells you in the email
19 from him to you that quote, I am told that the IAM is now
20 actively engaged in discussions which might make it possible
21 for some of the limited language Al ALPA now deserves to
22 protect against what is unknown to be less necessary.

23 That is an awkward phrase. You understand that to
24 mean that in the term sheets that you were negotiating with
25 negotiating committee, with TWA corporate, there was language

1 that would cause the concessions you were giving, ALPA was
2 giving, not to kick in unless IAM and the other participants
3 all made their concessions as well, correct.

4 A. That was a concern. I am not clear that that is what
5 this language means, but what you said before, it was a
6 concern to ALPA.

7 Q. All right. And if we turn to the next page we have the
8 beginning of this term sheet version number 11. Correct?

9 A. Yes.

10 Q. All right. And in fact, if I understand correctly, ALPA
11 actually drafted the first version of the term sheet. Isn't
12 that right?

13 A. If memory serves, that's correct.

14 Q. And so among the term sheet items under 1 B there is a
15 provision there for TWA agrees to have its investment bankers
16 meet with ALPA's investment bankers to discuss various terms
17 and conditions of possible deals. Right?

18 A. You are in 1B on page 1?

19 Q. Page 1 of the term sheet, sir.

20 A. Let me look at it.

21 Q. Certainly.

22 A. Yes.

23 Q. And if we turn to the second page of this, the top in
24 paragraph 3, there is a reference to a business plan. Do you
25 see that?

1 A. Yes, I do.

2 Q. And the business plan referred to there is also what is
3 often referred to as the stand-alone plan? Correct?

4 A. Subject to the fact that we weren't calling them a
5 stand-alone plan, yes.

6 Q. When I say, let me not use this phrase since it causes
7 you trouble. This business plan was a plan for how TWA could
8 go forward without either merging with someone or being
9 acquired by somebody.

10 A. On a short-term basis.

11 Q. And they had a very large accounting firm, and advisory
12 firm, Price Waterhouse Cooper LLP review that plan?

13 A. Yes, that's right.

14 Q. And you, you being ALPA, you didn't want to make, you
15 and the pilots you are representing, didn't want to make the
16 large financial concessions being asked for by TWA unless you
17 had a reason to believe that the plan had a reasonable chance
18 of success.

19 A. Yes, that's right.

20 Q. So they were letting you meet directly with Price
21 Waterhouse Cooper and to get a copy of the Price Waterhouse
22 Cooper analysis so that ALPA, and its large economic
23 investigation branch, we have heard so much back in DC could
24 analyze it and see whether the plan for TWA to go forward
25 without merger had a reasonable chance of success. Correct?

1 A. I am agreeing with what the language says, yes.

2 Q. That is what you were negotiating for, you wanted the
3 right to get a copy of Price Waterhouse Coopers analysis and
4 to speak to them so that you could assure yourself, right?

5 A. That's right.

6 Q. And TWA was willing to give that to you?

7 A. Yes.

8 Q. All right. And there is also an investment company,
9 investment bank, Rothschild, right?

10 A. That's right.

11 Q. They were going to share with you the confidential
12 Rothschild retainer letter so you would know what the terms
13 of their involvement were?

14 A. I don't remember that part.

15 Q. Ask just look down third line from the bottom in this
16 paragraph.

17 A. It says that ALPA will be provided a copy, yes.

18 Q. And you know, you see the reference all to the Bain
19 report there.

20 A. Yes, I see that.

21 Q. Do you recall what, who Bain was, right?

22 A. I am sorry, I don't call Bain being report. I know who
23 Bain is. I don't recall them being record.

24 Q. Who do you recall Bain being?

25 A. A consulting firm.

1 Q. 1 of the very large business consulting firms in the
2 United States?

3 A. Yes.

4 Q. So you were going to get copies of all of this
5 information, you being ALPA, so that you can decide whether
6 or not to make concessions necessary to let this dealing
7 forward, correct?

8 A. That is true.

9 Q. And you are agreeing, even though your amendable date
10 hadn't arrived yet as part of this deal ALPA would agree to
11 enter into amendments, or negotiations for amendments, to the
12 collective bargaining agreement?

13 A. Yes, that's right.

14 Q. So they are asking you to agree specially since they had
15 no right to begin those negotiations unless both parties
16 agreed?

17 A. That's right.

18 Q. Okay. And then you go to paragraph 3 which is a little
19 lower on the page. It is called limitations of amendments.
20 Do you see that there, sir?

21 A. Yes. I did.

22 Q. All right. And could you, these limitations on
23 amendments were conditions that either had to be satisfied,
24 that is, they actually had to come true or ALPA had to waive
25 them before the concessions ALPA was going to make in the

1 agreement, concessions in its collective bargaining

2 agreement, would take effect?

3 A. Let me review that.

4 Q. Certainly, certainly.

5 (Pause)

6 A. Yes.

7 Q. So you are going to agree, you, I keep saying you, you
8 don't mean you personally, you understand by that I mean ALPA
9 on behalf of the TWA pilots?

10 A. Yes.

11 Q. That you are going to agree to certain changes,
12 collective bargaining agreement, that will include
13 concessions of some substantial financial value but none of
14 those are going to take place unless all these conditions
15 that are listed here either actually happen or ALPA decides
16 to waive them, right?

17 A. Correct.

18 Q. And one of those is that the savings from the amendments
19 to the TWA collective bargaining agreement won't exceed the
20 sum of 17.6 million per year, excluding benefits?

21 A. Correct.

22 Q. Those are wage givebacks, right?

23 A. They would be in effect wages, they would be the result
24 of work rule changes which translate to wages.

25 Q. Right. And then in addition the pilots would give back

1 ten percent of the current medical and dental benefit costs.

2 So the first set of ones are limits on how much the pilots,
3 TWA pilots, are giving back, right?

4 A. Correct.

5 Q. If you swing down to the next set of limitations called
6 "Further Limitations," there is a paragraph relating to the
7 IAM, correct?

8 A. There is a paragraph relating to the IAM.

9 Q. All right. Essentially the first part of that, C, says
10 that on a percentage basis the pilots aren't going to give up
11 more in effective salary and wages than the IAM members give
12 up, right?

13 A. Correct.

14 Q. Sort of a one for all, all for one, you don't want to be
15 the guys carrying the whole load. Is that right?

16 A. Yes.

17 Q. Okay. And on the next paragraph is that the amendments,
18 these cost give-aways, or salary give-aways, work rule
19 changes and all that, they don't become effective unless the
20 total savings that TWA is going to have on a annual basis is
21 at least 100 million dollars.

22 A. That is what the term sheet says.

23 Q. That is what you all were negotiating and agreeing to?

24 A. We weren't agreeing to it but we were negotiating.

25 Q. All right. And that of course relates to the 100

1 million dollars in receivables income that are supporting a
2 note to a group called Constellation, correct.

3 A. No.

4 Q. The 100 million dollars is not related to the other 100
5 million dollars. It is that what you are telling us.

6 A. It would not collect 100 million dollars in cost savings
7 in time to pay the group of creditors.

8 Q. But you knew that Constellation wanted to see that there
9 is going to be 100 million dollars a year in savings in order
10 to work out their deal?

11 A. That was not represented to us, no.

12 Q. Let's turn to the next page of this agreement?

13 THE COURT: Draft agreement.

14 Q. Of this draft agreement. Conditions subsequent. Do you
15 see that?

16 A. What page?

17 Q. The bottom of page 2, it says "Conditions Subsequent".
18 The conditions appear on the following day. Page 3.

19 A. Okay.

20 Q. All right. And you know what conditions subsequent I
21 is, sir, right?

22 A. Yes.

23 Q. It is something that after a deal comes into place, it
24 has a, it has to happen to keep the deal in force, correct?

25 A. That's right.

1 Q. And a condition subsequent here including that they have
2 agreements with the aircraft lessors. Do you see that, sir?

3 A. Give me a moment.

4 Q. Slur. Don't mean to rush you?

5 A. Okay.

6 Q. And you knew that one of the largest items that TWA has
7 are the leases they have on their airplanes, right?

8 A. It is a large item, yes.

9 Q. How many airplanes do they have at this point in time?

10 A. 185 to 190.

11 Q. And about 17 of them are owned outright by the airline,
12 correct?

13 A. I am not sure.

14 Q. Okay. And then the vast majority of the rest were being
15 leased from Boeing, the manufacturer?

16 A. There were many leased from Boeing, yes.

17 Q. And then there were also a handful leased from capital
18 lease companies, people in the business of buying airplanes
19 and leasing them to airlines?

20 A. Yes.

21 Q. We are talking primarily Boeing when we talk about the
22 leases and then a handful of planes from other people,
23 correct?

24 A. In terms of their total fleet, is that what you are --

25 Q. Total dollars of outstanding liability the airline has.

1 Is that correct, sir?

2 A. That Boeing is the largest of those?

3 Q. Yes.

4 A. Yes.

5 Q. And by far the largest?

6 A. I can't say that.

7 Q. If you remember?

8 A. I can't say that right now.

9 Q. That is fine. And also another condition, subsequent
10 condition is that there are in fact amendments made to the
11 collective bargaining agreements between TWA and IAM, right?

12 A. Correct.

13 Q. That you, ALPA, finds satisfactory?

14 A. If we made such an agreement, yes.

15 Q. Right. Okay. Now, let's move down a little lower to
16 confidentiality here. I am sorry. Higher, to paragraph 4,
17 termination of amendments. One of the things that you on
18 behalf of the TWA pilots want to make sure ha was that if the
19 pilots made these concessions and other people made the
20 concessions, the lessors and the IAM, that they wouldn't get
21 snap backs where they get the concessions back and you were
22 still stuck with your concessions, correct?

23 A. Yes. That's right.

24 Q. That is what this provision deals with?

25 A. Okay. I am going to read it.

1 Q. Sure, please.

2 A. Okay.

3 Q. That is an accurate statement, sir?

4 A. It is a fair statement, yes.

5 Q. All right. Now we go down to confidentiality
6 agreements, a little bit lower on that page. The last line
7 is ALPA's acknowledgement that the terms of this agreement,
8 although confidential in some sense, have to be shown to both
9 the aircraft lessors and the IAM as part of getting them to
10 do their deal?

11 A. If they were in agreement, yes.

12 Q. That is a correct statement then?

13 A. Yes.

14 Q. Paragraph 7 is another paragraph with some importance,
15 correct, sir. Professional fees?

16 A. Yes.

17 Q. And that is TWA's agreement that if an agreement is
18 signed, that they will pay ALPA for its fees for its lawyers,
19 and investment bankers and so on. Correct?

20 A. It was TWA's proposal, yes.

21 Q. Right. So if you entered an agreement, they will pay
22 you, turn to the top of the next page, they will pay ALPA an
23 amount not to exceed \$120,000 to cover the legal fees and
24 investment banker fees you sustained in reaching this
25 agreement. Right?

1 A. Yes.

2 Q. All right. Now, these negotiations continued over the
3 following days and weeks, correct, sir?

4 A. Until the end of December.

5 Q. Now, let's go to exhibit 167, if we could. P-167, your
6 Honor. I am sorry?

7 THE COURT: P?

8 MR. JACOBSON: Yes, sir.

9 Q. Take a chance to look at that if you need to, sir.

10 MR. JACOBSON: Your Honor, I don't think I offered
11 P-167 in evidence.

12 THE COURT: 166 I have marked in evidence without
13 objection.

14 MR. FRAM: Thank you.

15 MR. JACOBSON: Thank you. I forgot whether I did.
16 I wouldn't want to leave it out.

17 THE COURT: You did it.

18 (Pause)

19 Q. Have you had a chance to review that now?

20 A. What is the question?

21 Q. There is no question yet. Have you had a chance to
22 review that? I wanted to give you a chance to look at it.

23 By the way, this term sheet we have been looking at
24 and went through part of it. You were involved in working on
25 that document, revising it and drafting it, correct?

1 A. I was.

2 Q. And Steve Tumblin was?

3 A. Correct.

4 Q. And Michael Glanzer was?

5 A. Yes.

6 Q. All three of you were involved in drafting this document
7 for the concessions that were being asked from ALPA for TWA?

8 A. And obviously TWA.

9 Q. I am talking about just your side of the table?

10 A. Correct.

11 Q. You recognize this document, exhibit P-167, as being a
12 series of emails between you and Stan Henderson of TWA
13 concerning further drafts, et cetera, of this term sheet?

14 A. Yes.

15 MR. JACOBSON: I move exhibit P-167 in evidence.

16 MR. FRAM: No objection.

17 THE COURT: P-167 in evidence.

18 Q. Conveniently these are in chronological order from the
19 first to the last. Front to back, unlike so many documents.
20 Let's look at the first page if we could. We had been
21 looking on December 5 at term sheet eleven, now we are
22 looking at term sheet 16, here on December 14. Correct?

23 A. We are on the top page?

24 Q. Yes, sir.

25 A. Okay. Go ahead.

1 Q. Did I get that right?

2 A. This is the first page, right.

3 Q. Yes, sir. Yes, sir.

4 A. Okay.

5 Q. This was an email you received approximately 7:00 p.m.
6 from Stan Henderson, correct?

7 A. Correct.

8 Q. He is forwarding you term sheet 16 dot DOC. Can you
9 read to the jury what Mr. Henderson wrote to you in this
10 email.

11 A. As discussed in our phone conversation as it relates to
12 term eleven, the language is acceptable to TWA unless advised
13 of possible RLA implications that we might not be aware of.
14 We have been advised that we will have this issue clarified
15 in the morning.

16 Q. All right. So the document is getting closer to a final
17 form?

18 A. Yes, it was.

19 Q. Turn to the next page. This is December 15, the next
20 day, 955 in the morning, from Mr. Henderson to you, correct?

21 A. Yes.

22 Q. And it is a term sheet 16 and tell the jury what this
23 says?

24 A. Final version with all agreed changes in place including
25 those sent last night without any additional change.

1 Q. All right. Final version. So at this point we have a
2 document between the two of you, TWA and ALPA, which both
3 sides appear to be satisfied with. Is that correct?

4 A. At that date, yes.

5 Q. That date being December 15, 2000?

6 A. Correct.

7 Q. All right. Then the next email that is just no text,
8 just forwarding you a document called term sheet 16 clean.
9 Do you see that?

10 A. Yes.

11 Q. By "clean" you understand that that means the document
12 has had all the marks showings, insertions and deletions
13 removed from it?

14 A. Yes.

15 Q. That is a document ready for signing if parties want to
16 sign it?

17 A. I think that is going a step too far. But I agree with
18 you, by what clean means.

19 Q. It is in the form that one would expect to see a
20 document if you are ready to sign it?

21 A. Correct.

22 Q. Without all the strike-outs and insertions, correct?

23 A. Correct.

24 Q. Let's turn to the next email. This is email December
25 26, 2000. Day after Christmas. Right?

1 A. Right.

2 Q. From Mr. Henderson, to you. Correct?

3 A. I am included.

4 Q. Yes. And the other people included include Steve
5 Tumblin?

6 A. Correct.

7 Q. And R Roach of the International Association of
8 Machinists?

9 A. Correct.

10 Q. And S Sleigh of the International Association of
11 Machinists? ?

12 A. Yes.

13 Q. Do you know R Roach?

14 A. I met him and talked to him.

15 Q. Who is R Roach, what is first name?

16 A. Haven't Robert.

17 Q. Who is Robert Roach?

18 A. He was the head of the transportation division of the
19 IAM at that time.

20 Q. In fact his office in Washington, D.C., correct?

21 A. I think that's right..

22 Q. S Sleigh?

23 A. I think I knew that name at the time, but I don't have a
24 recollection today.

25 Q. Was S Sleigh your counterpart at the local IAM office?

1 A. I didn't know of a local office.

2 Q. Okay, all right. Then it is you. And then finally Mike
3 Lichty?

4 A. Mike Lichty.

5 Q. He is a person at TWA?

6 A. Yes.

7 Q. It is called Intention of Restructuring Professionals
8 is the caption. It is a new document?

9 A. Yes. I am not sure what your question is.

10 Q. Let me rephrase it. This is a different document than
11 term sheets. This is a document that is contemplated as part
12 of the overall transaction, but it is a different one is a
13 term sheet?

14 A. Yes.

15 Q. This is a document relating to the retention of
16 restructuring professionals who will operate or at least
17 manage -- I guess operate is the right word, TWA Inc. once
18 all the documents are signed in place, correct?

19 A. Yes.

20 Q. There is a company, a restructuring firm called J. Alix
21 and company, correct?

22 A. Correct.

23 Q. J. Alix was the company that recently completed the
24 restructuring of America West airlines. Do you recall that?

25 A. I wasn't aware of that at the time.

1 Q. And you know J. Alix was a restructuring company that
2 was being recommended to deal by Boeing?

3 A. It was being recommended to TWA.

4 Q. Yes, to TWA. You were in that loop, weren't you?

5 A. I didn't know that they were recommended by Boeing.

6 Q. Did you have an idea where J. Alix came in?

7 A. I, my understanding at the time is that they were a firm
8 that the IAM was interested in, and were pushing.

9 Q. All right. Okay. Now, Steve Tumblin had drafted the
10 retention agreement initially and this is an email forwarding
11 to you and him and the others we just described TWA's mark-up
12 of the documents retained, the professionals, correct?

13 A. Correct.

14 Q. There are changes, things they think are a little
15 confusing need to be changed. Is that a fair statement? Go
16 to the hex page. There is a document called TWA restructure.
17 This is December 26 also. Do you see that?

18 A. Yes.

19 Q. Apparently a document that had been circulated
20 previously still had some mark-ups on it so they eliminated
21 that because that is not supposed to be there on this clean
22 version. Is that a fair statement?

23 A. Are you looking at the last page?

24 Q. Yes. These two go together, correct?

25 A. Right.

1 Q. Yes. Is that a fair statement?

2 A. Yes.

3 Q. They are trying to get a document finalized, changes
4 have been made, to get it ready so if the parties wish to go
5 forward they can sign it, correct?

6 A. Yes.

7 THE COURT: Was it ever signed?

8 THE WITNESS: No.

9 MR. JACOBSON: I was going to get to that question.

10 Q. Now, you know --

11 THE COURT: I am sitting here, I had nothing to do,
12 so I -- go ahead.

13 Q. Now, you are aware that this document, these documents
14 were initially set to be signed at a meeting of the board of
15 directors of TWA, approved, signed by the TWA side, in the
16 first week of January of 2000?

17 A. I was not aware of that, no.

18 Q. All right. Were you aware that that they were postponed
19 to be brought up again at the, was it January 8 or January 9?
20 What was the date of the American Airline asset purchase
21 agreement was signed, sir?

22 A. I think it was the 9th.

23 Q. At a regularly scheduled meeting of the board of
24 directors of TWA?

25 A. It was at a board of directors meeting.

1 Q. That was a the board of directors meeting where the J
2 Alix restructuring agreement was to be brought up?

3 A. As I said, I wasn't aware of that.

4 Q. Oh, you weren't aware of that.

5 Now, we talk about Bob Christy before. Right? And
6 he is the head of economic and financial analysis at ALPA.

7 A. Yeah, he wasn't the head but he was, I think he had a
8 management title.

9 Q. Was his title director, something like that?

10 A. No, it wasn't director.

11 Q. Who was his director?

12 A. Ana McAhren Schultz.

13 Q. Okay. And he came to that first MEC meeting after the
14 TWA American Airline deal was announced, correct?

15 A. Yes.

16 Q. And he total, well attended meeting, over 100 pilots
17 there?

18 A. Yes.

19 Q. He told the pilots, Christy told the pilots, quote,
20 "We are not going to waive scope." Do you recall that?

21 A. He said something very close to that.

22 Q. All right. You might still have, I will come to this
23 one later.

24 How closely did you work with the people at Cohen,
25 Weiss and Seltzer during the period say from January of 2001

1 through April of 2001?

2 A. Fairly closely.

3 Q. Were you on the circulation lists for memos from them?

4 Legal memos?

5 A. No.

6 Q. What is your middle initial, sir?

7 A. C.

8 Q. C? All right. You already testified to some extent

9 about the asset purchase agreement. And section -- article

10 10. And article 10 had some very specific provisions of the

11 CBA that American Airlines want to have removed. Correct?

12 A. It was scope successorship and a phrase relating to

13 benefit plan.

14 Q. Right. Scope, successorship and benefit plans?

15 A. Correct.

16 Q. American Airlines had no desire or made no questions in

17 the asset purchase agreement for any other provisions to be

18 rere moved?

19 A. Correct.

20 Q. But ultimately, the collective bargaining agreement that

21 you worked on and that you had signed by the MEC waived more

22 than the items that American Airlines had asked for?

23 THE COURT: That is the agreement with TWA LLC.

24 MR. JACOBSON: Yes, sir.

25 A. Yes, that's right.

1 Q. In fact, you prepared a memorandum detailing the things
2 that we waived that weren't required from the asset purchase
3 agreement?

4 A. That's right.

5 Q. Let me give you what I believe is already in evidence
6 but may not be. J 403, your Honor.

7 THE COURT: I have up to J 402 is all I have. I
8 don't have J 403.

9 Q. I don't have a stickered one here. Let me give you J
10 403.

11 THE COURT: J?

12 MR. JACOBSON: Yes.

13 THE COURT: You are familiar with this document.

14 MR. FRAM: Yes, your Honor, there is no objection
15 to it going in evidence.

16 THE COURT: Okay. I will add it. Is that going to
17 be in evidence?

18 MR. JACOBSON: I am intending to do it, your Honor.

19 THE COURT: Any objection?

20 MR. FRAM: No objection, your Honor.

21 THE COURT: Okay.

22 Q. This is a memorandum, the first two pages are a
23 memorandum that you prepared, sir?

24 A. Yes.

25 Q. And what you had done is collected a number of filings

1 in the TWA bankruptcy?

2 A. I think it was one filing with attachment.

3 Q. Okay. The subject line of your memo is "Icahn objection
4 to the Rejection of the Karabu Ticket Program?"

5 A. Yes.

6 Q. This is his objection and the various exhibits that he
7 had attached to, or his lawyers attached to. Is that right?

8 A. Apparently so, yes.

9 Q. You remembered that at the time. When you put it
10 together you knew what it was, right?

11 A. Yes.

12 Q. And you quote a portion of the objection. Correct?

13 A. Yes.

14 Q. All right. And you quoted that, or you sent this to the
15 TWA MEC. Is that right?

16 A. Yes.

17 Q. And to the TWA MEC's bankruptcy committee?

18 A. Yup.

19 Q. And to the TWA MEC's merger committee?

20 A. Yes.

21 Q. And their negotiating committee as well?

22 A. That's correct.

23 Q. You thought it was an important document for them to
24 know about, right?

25 A. That would have been interesting information.

1 Q. And you quoted a portion of the motion that you thought
2 was of particular importance so you would highlight it for
3 the readers, is that right?

4 A. Apparently so, yes.

5 Q. Do you recall doing that, sir?

6 A. I don't.

7 Q. All right. And this is what they say backed up with all
8 these documents that they are citing, correct?

9 A. Correct.

10 Q. And what they say is that as the evidence -- why don't
11 you read that paragraph that you chose to the jury so they
12 are aware what you thought was important for these various
13 MEC committees to know.

14 A. This whole paragraph?

15 Q. Yes, sir. I know it is a little long.

16 A. Okay. As the evidence already adduced in this case
17 shows, motivating the proposed --

18 Q. I can't hear you.

19 A. As the evidence already adduced in this case shows,
20 motivating the proposed American acquisition transaction is
21 the desire of TWA's senior management to retain their jobs,
22 avoid being replaced by a crisis management team from J, Alix
23 and Associates, and receive lucrative bonuses. As discover
24 in connection --

25 Q. That is probably "discovery," right?

1 A. Probably. In connection with the employee retention and
2 bidding procedures motions heard by Judge Robinson on January
3 26 and 27 revealed, TWA had been pursuing what it termed the
4 self help plan, which involved a restructuring of TWA's debts
5 through a combination of new and replacement financing and
6 concessions from its aircraft lessors and unions. A
7 condition to certain union concessions was the replacement of
8 top management with a team from Jay Alex.

9 Q. You don't have to read the citations.

10 A. Okay.

11 Q. Despite the fact that TWA was on the verge of
12 successfully implementing the self help plan, senior
13 management chose to shift its focus to the purchase offer
14 from American which had agreed to retain senior management on
15 at least an interim basis, and was willing to support a 15
16 million dollars management bonus program, of which one-third
17 would flow to the debtor's three most senior managers? All
18 right. And the one-third of 15 million is five million.

19 Correct?

20 A. Yes.

21 Q. And the most senior of those managers would be Bill
22 Compton, CEO?

23 A. Senior by title, yes.

24 Q. CEO, CFO, and General Counsel were three who were going
25 to share the bonus plan?

1 A. I don't know that. But could be. I don't know.

2 Q. You don't recall or didn't check it out?

3 A. Those three people I think were the three most senior.

4 Q. All right. And is it typically when three senior
5 manages split a pie like that, that they split it all equal
6 shares or does someone tend to get a bigger piece of pie?

7 MR. FRAM: Objection, no foundation. Calls for
8 speculation. How would he know what typically happens when
9 the bonus pie gets split up.

10 THE COURT: Rephrase it. I will sustain that
11 objection.

12 MR. JACOBSON: I understand, your Honor.

13 Q. Would you expect that under this retention plan that
14 American Airlines is offering the senior management of TWA,
15 that Mr. Compton should expect to receive at least a third of
16 the \$5 million bonus.

17 A. I don't know.

18 Q. All right. I think this is defendant's 379. I will
19 skip over it. I want to get done this afternoon.

20 (Pause)

21 THE COURT: To the court reporter, silence is not
22 golden. She gets paid by the word.

23 MR. JACOBSON: I am trying to skip ones.

24 Q. I believe we had a version of this document earlier.
25 This would be plaintiff's 138. Let me give this?

1 THE COURT: P-138.

2 MR. JACOBSON: Yes, your Honor.

3 THE COURT: P-138 is not in evidence.

4 Q. Sir, you have in front of you P-138?

5 A. Yes.

6 Q. All right. And is this a copy of your March 12, 2001,
7 memo to Richard Seltzer, a version of which was previously
8 entered in evidence on your direct examination?

9 A. Yes.

10 Q. And there are certain handwritten notes on this.
11 Correct?

12 A. Yes.

13 Q. And that handwriting is not your handwriting, is it,
14 sir?

15 A. No, it is not.

16 Q. And you have since heard that that handwriting belongs
17 to Mr. Seltzer. Is that correct?

18 A. I haven't learned that, no.

19 Q. All right. Do you recall that it --

20 THE COURT: Have you seen this document with those
21 handwritten notes on it before.

22 A. I think I was asked to say something about it in my
23 deposition.

24 THE COURT: This came from ALPA's file, not from
25 Seltzer's file.

1 MR. JACOBSON: Correct.

2 THE COURT: This was in ALPA's file.

3 THE WITNESS: But I don't, you know, I only know
4 what I know.

5 THE COURT: I have to agree with that. I know a
6 few things I don't know.

7 THE WITNESS: Sorry to be flippant, I just don't
8 know about the handwriting.

9 THE COURT: Go ahead.

10 Q. So you had a telephone conversation with, with Mr.
11 Seltzer the day or day after you sent him this memo, either
12 March 12 or March 13. Do you recall that, sir?

13 A. Well, we met on March 14. Which may have had a
14 telephone conversation on the 13. I don't recall.

15 Q. You don't recall one way or the other.

16 A. No, I don't.

17 Q. So you don't recall whether or not you had an exchange
18 with him about what his views were and in in connection with
19 your questions prior to that meeting?

20 A. It is certainly possible but I don't have a
21 recollection.

22 THE COURT: Mr. Holtzman, in the category of
23 knowing what you know, did Mr. Seltzer answer your question.
24 Forget whether, this handwriting or any other way, in some
25 fashion did he convey to you answers to your questions. Four

1 questions. We have seen them before.

2 MR. JACOBSON: We have seen the questions.

3 THE COURT: P-138 I think. Did Mr. Seltzer convey
4 answers to those questions?

5 A. He certainly answered number 1.

6 THE COURT: By the way, is there any objection, Mr.
7 Fram, to admitting P-138?

8 MR. FRAM: There is, your Honor, it is not his
9 handwriting.

10 THE COURT: No, no. The document itself.

11 MR. FRAM: Your Honor, that is already in evidence.
12 The memo.

13 THE COURT: It is?

14 MR. JACOBSON: Not the handwritten version.

15 MR. FRAM: I don't think he should be questioned
16 about the handwriting. It is not his.

17 THE COURT: All right. But the document, I thought
18 I have seen the document before.

19 MR. FRAM: The document is in evidence, your Honor.
20 Give me a moment.

21 THE WITNESS: Your Honor, he asked me questions.

22 THE COURT: In some fashion, not by his handwriting
23 because you don't recognize the handwriting, but in some
24 fashion, he answered the question.

25 THE WITNESS: He did.

1 THE COURT: Well, it is up to you. I will allow
2 testimony as to what Seltzer conveyed, whether orally or
3 otherwise. Of the answers.

4 Q. Your first question to him --

5 THE COURT: I am not going to admit, since the
6 document is already in evidence, as probably a D exhibit.

7 MR. JACOBSON: Since I understand Mr. Seltzer is
8 going to be here, we can ask him about the handwriting.

9 THE COURT: That's right. It may get in at that
10 point.

11 MR. FRAM: This is D 378.

12 THE COURT: D 378. Okay. Thank you.

13 Q. The second question there, was quote, if American
14 continues to insist on a scope waiver, ALPA refuses and no
15 substitute agreement is concluded, will TWA prevail against
16 ALPA on Section 1113? Do you see that question?

17 A. Yes.

18 Q. Don't put it up on the screen. -- oh, that is in
19 evidence.

20 THE COURT: Yes. P 378 version.

21 Q. All right. Did Mr. Seltzer in or around March 12, 2001,
22 give the answer, no, no way, no way that TWA is going to
23 prevail?

24 A. When I said he answered, I am thinking of the later MEC
25 meetings. I think in this period --

1 THE COURT: Mr. Holtzman, that is a pretty
2 straightforward question. You asked him will TWA prevail a
3 against ALPA on the Section 1113. Did he tell you at any
4 point what his opinion was on that subject.

5 A. Yes, at any point.

6 THE COURT: What was his opinion?

7 THE WITNESS: That TWA would prevail.

8 THE COURT: That TWA what?

9 THE WITNESS: That their motion would be granted,
10 their application of 1113 would be granted.

11 THE COURT: His advice to you was the 1113 was
12 going to be granted?

13 THE WITNESS: Right.

14 THE COURT: When did he give you that advice?

15 THE WITNESS: That is what I was getting to. I
16 think in still a discussion, obviously the answer is on March
17 21.

18 Q. Isn't it a fact that in or around March 12, March 13,
19 that timeframe, that Mr. Seltzer in fact TOLD you that there
20 was no way that TWA was going to succeed on this motion, 1113
21 motion?

22 A. No.

23 Q. Didn't you in fact get a phone call from Howard
24 Hollander in mid March asking you about your views about the
25 1113?

1 A. It is possible, but I don't have a recollection.

2 Q. All right. And did he ask you what you thought the
3 outcome would be. Do you have any recollection of that at
4 all, sir?

5 A. I don't.

6 THE COURT: The question was will TWA prevail.
7 Against ALPA. And you said, you are saying his advice was
8 remember, TWA wants the rejection of the collective
9 bargaining agreement.

10 A. Right. TWA files an application asking the Court to
11 reject --

12 THE COURT: He said will TWA prevail against ALPA.
13 Will they? What did he tell you.

14 A. As I said on direct, he said that they will prevail.

15 Q. Okay. You said that on April 2, he said that on?

16 A. He said it on April 2 and he also said it on March 21,
17 in my recollection, yes.

18 Q. Now, when you spoke to Howard Hollander you told Howard
19 that in fact you had consulted with some of the top
20 bankruptcy lawyers in the country on this issue and their
21 opinion was that TWA would not prevail.

22 MR. FRAM: I object. There is no foundation he
23 spoke to Hollander about this. He said in response to the
24 prior question he --

25 THE COURT: I will let him answer this question.

1 A. No, I didn't. He didn't have to.

2 Q. And did you refer him on to Clay Warner for more
3 questions?

4 A. I don't recall that.

5 Q. Let me give you what has been marked as exhibit J 169?

6 This is one of the memos you circulated before,
7 March 12.

8 A. Yes.

9 Q. This is a memo from you to, you move J 169 I think it
10 may already be in evidence under a different number.

11 THE COURT: I don't know.

12 MR. FRAM: It is. We put it in this morning, your
13 Honor.

14 MR. JACOBSON: You put it in as D something.

15 MR. FRAM: We put it in as D 380.

16 THE COURT: It is already in evidence. It is in
17 evidence as 380.

18 MR. FRAM: Yes, your Honor.

19 Q. Wasn't this memo your effort to present to Clay Warner
20 some questions relating to the litigation theory that Roland
21 Wilder had presented to you?

22 A. Relevant to that theory.

23 Q. I am sorry.

24 A. Yes, it is relevant to that theory.

25 Q. Because you want to find out from Clay what his thoughts

1 were about these questions you had relating to Roland's
2 theory and how various things might workout?

3 A. Yes.

4 Q. And Clay's reaction was favorable at that point,
5 correct?

6 A. I don't think so.

7 THE COURT: You asked fairly complex questions of
8 Clay Warner who works for you and is an ALPA attorney. Did
9 you perceive him as having special expertise in this area?.

10 A. Well, he has the time to do the research. And he is in
11 the legal department, and I value the legal departments
12 expertise.

13 THE COURT: You didn't consider yourself as being
14 in the legal department.

15 A. No, I was in the representation.

16 Q. Let me give awe copy of a document already in evidence
17 as P-119. J 119. I am sorry.

18 THE COURT: Yeah, that is in evidence.

19 Q. Are you familiar with this document, sir?

20 A. Yes.

21 Q. All right. And this is one of a number of legal
22 memorandums that Roland Wilder prepared during the course of
23 his representation of the merger committee. Correct?

24 A. Yes.

25 Q. And he shared these with you?

1 A. Yes.

2 Q. Because you are the lawyer on the spot that at the MEC
3 headquarters?

4 A. Yes.

5 Q. And you are working with the merger committee and the
6 negotiating committee?

7 A. That's right.

8 Q. And was this memo, did you say that meeting was on the
9 14th, 13th, what day did you say the meeting was?

10 A. The 14th.

11 Q. So you had this memo the day before.

12 A. I am not sure when I received it. I think we did
13 discuss these issues on the 14th.

14 Q. All right. He gives very detailed explanation of every
15 step of his analysis, doesn't he?

16 A. Yes.

17 Q. Yes?

18 A. It is detailed, yes.

19 Q. And he lays out what the goals are, right?

20 A. Yes.

21 Q. What the risks are?

22 A. Yes.

23 Q. All right. He cites the statutes. Correct?

24 A. He includes cites.

25 Q. All right.

1 Q. He says, what the object is, the goal and the object of
2 the negotiations is to get a fair and equitable integration?

3 A. Yes.

4 Q. And you agree with those goals?

5 A. Yes.

6 Q. All right. And he talks about what means might be
7 available to that, the limited means that are available? Is
8 that right?

9 A. That's right.

10 Q. And so he says that essentially says what we need to do
11 here in some way to slow down the process a little bit so
12 that the negotiation process has time to work.

13 A. Yes.

14 Q. Now, you have been involved in contract negotiations in
15 the past, right?

16 A. Yes.

17 Q. All right. And for example, you were involved in the,
18 what is called contract 98 for TWA MEC?

19 A. That's correct.

20 Q. How many years was that contract under negotiation?

21 A. Two.

22 Q. Two years. And the prior agreement between TWA and
23 ALPA, what year was that in?

24 A. '94.

25 Q. How many years did that one take to negotiate?

1 A. That was one of the quick deals. That was three or four
2 months.

3 Q. Three or four months. Not a big change from the prior
4 contract, is that right?

5 A. Well, it was a big change. It was a concessionary
6 environment and you can do a lot in a hurry if you need to.

7 Q. There all right. But typically if you are negotiating
8 big things you need some time to do it, right?

9 A. Often times.

10 Q. Now, we talked about establishing leverage a little
11 earlier, and that being the goal of Roland Wilder. If you
12 turn to the third page of this document, it has a whole
13 section about establishing leverage, right?

14 A. That's right.

15 Q. And if you go to the third paragraph there, he is
16 talking about what is called minor disputes. And whether or
17 not bankruptcy court has jurisdiction over minor disputes.

18 A. Yes.

19 Q. And you understand a major dispute is whether or not
20 there a is a contract in place or who is bargaining
21 representative of the employees, right?

22 A. It can be, that can be an issue.

23 Q. And a minor dispute is essentially an argument over what
24 does a particular provision in a contract mean, and whether
25 it has been breached or not?

1 A. That is an example.

2 Q. As a normal matter of your years doing this stuff if you
3 have a minor dispute over a labor contract you don't just sue
4 the other side, right?

5 A. You cannot bring suit.

6 Q. Right. You cannot bring suit as a doctrine that says
7 that you have got to go through an administrative process,
8 right?

9 A. Well, your remedy is the systems board of adjustment.

10 Q. First you file a grievance, correct?

11 A. Yes.

12 Q. That gives the company a chance to correct their
13 misconduct on their own by being, saying hey you did this
14 wrong, right?

15 A. Yes.

16 Q. And if they don't agree with the grievance then you can
17 go to the system board of adjustment? Correct?

18 A. Yes.

19 Q. The system board of adjustment can have hearings, you
20 can present evidence, they make a decision?

21 A. Correct.

22 Q. That is a form of arbitration and that decision is
23 binding on the parties?

24 A. Correct.

25 Q. All right. And so what Mr. Wilder is saying in his

1 memorandum addressed to you and the other advisors of the MEC
2 was that we have a provision in our CBA here that says you
3 can't enter into a successorship arrangement unless the
4 successor gross to keep this contract in place. Correct?

5 A. Yes.

6 Q. They said since they are entering into an asset purchase
7 agreement that doesn't have that provision, they, we can say
8 they violated that provision of our contract.

9 A. Yes.

10 Q. And so that would be a minor dispute under the contract,
11 under the labor law?

12 A. Yes, that's right.

13 Q. And therefore, that goes to a grievance?

14 A. That's right.

15 Q. You can file a grievance for that. If the company
16 disallows the grievance you can go to the system board of
17 adjustment?

18 A. Again correct.

19 Q. You can't sue them over it because under your labor
20 contract, under the collective bargaining agreement, the
21 labor law, you have to go through the administrative process.

22 A. The you have to employ the grievance machinery, yes.

23 Q. I will call it a grievance machinery. You have to use
24 the grievance machinery. Right?

25 A. Yes. Correct.

1 Q. So Roland Wilder's proposal was that because you have to
2 use the grievance mechanism and because the courts don't have
3 jurisdiction, this claim, that assigning the asset agreement,
4 they violated our contract, is something outside the
5 jurisdiction of the Court system.--

6 THE COURT: Are you asking him to agree to that?

7 MR. JACOBSON: I am asking if that is the theory.

8 THE COURT: There will be a follow-up question by
9 me.

10 MR. JACOBSON: I got two more questions before your
11 follow-up question.

12 THE COURT: Because the contract didn't say it
13 would have to be, it only said that the union would go, that
14 American would only go forward with the transaction if the
15 pilots agreed to that.

16 It wasn't a case where -- am I correct? It wasn't
17 a case where American and TWA agreed to abrogate those
18 provisions. They would have said the conditions of the deal
19 is the pilots themselves.

20 THE WITNESS: That's right.

21 Q. The contract, the CBA said they can't enter an agreement
22 to do that, though?

23 THE COURT: To do what?

24 MR. JACOBSON: An agreement to have the pilots waive
25 their conditions.

1 THE COURT: Where does it say that? Where does it
2 say the pilots can't waive --

3 MR. JACOBSON: It doesn't say the pilots can't
4 waive. It says the employer can't make that a term of their
5 successorship contract.

6 THE COURT: Wouldn't need to. American would have
7 two choices, either go ahead with the deal without the
8 waiver, or back out of the deal, in which case there would be
9 no deal.

10 MR. JACOBSON: Those are the choices.

11 THE COURT: It is never a situation where anybody
12 is made to accept that deal. All right.

13 Go ahead.

14 Q. And wasn't part of Mr. Wilder's litigation theory that
15 in order to allow the system board of adjustment to go
16 through the grievance process, that an action could be filed
17 in federal court --

18 THE COURT: You are asking if that was his theory?

19 MR. JACOBSON: Yes, if that was his theory.

20 THE COURT: You are asking him to read backwards
21 what is already in evidence. That is his theory. That is in
22 evidence already.

23 MR. JACOBSON: One more thing.

24 THE COURT: No, you can't use him as a foil to try
25 to prove the right necessary of that opinion.

1 If you want to say that is the opinion you gave,
2 that is already in evidence.

3 Q. Didn't the collective bargaining agreement include a
4 provision prohibiting TWA if it filed bankruptcy from filing
5 a 1113 motion?

6 A. Yeah, I believe it did.

7 Q. That was something that TWA agreed to, in return for the
8 concessions that the pilots made in the second bankruptcy?

9 A. Either the first or second.

10 Q. One of the two bankruptcies?

11 A. Yes.

12 Q. And that was a bargained for consideration.

13 A. We wanted that provision and we object obtained that
14 provision.

15 Q. Wasn't another one of his theories that once TWA filed
16 the 1113 motion, they were again in breach and there was
17 another minor dispute?

18 THE COURT: No. Hold it. You can show what advice
19 they got. You can't use him as a foil to get to the
20 rightness of that opinion. You know what I am saying. If
21 you want to say was that the advice you got from somebody,
22 tell him what advice was given by -- but not that it is
23 correct advice. Only that it is the advice that was given.

24 Q. Wasn't part of the advice that Roland Wilder gave the
25 MEC that you were present for, and you saw his memos, that

1 was by filing the 1113 motion itself, TWA would be creating a
2 minor dispute that would be subject to the system board of
3 adjustment?

4 A. The merits of any of the --

5 THE COURT: No, did you get that? Was that advice
6 that Roland Wilder gave?

7 A. That --

8 THE COURT: That the filing, the mere filing of a
9 1113 motion, was a breach of the CBA, the collective
10 bargaining agreement, which would trigger the right to the
11 grievance procedure as a minor dispute.

12 A. That was part of the Roland Wilder's theory.

13 THE COURT: Okay.

14 Q. I am trying to throw as many overboard as I can, your
15 Honor, to get to the end?

16 THE COURT: Okay.

17 Q. I believe this is a document that was not yet in
18 evidence. I would like to give you what has been marked as
19 exhibit P 235. We are stepping forward in time now, Mr.
20 Holtzman, to May of 2001.

21 A. Okay.

22 Q. Do you recall getting this email prepared by Clay
23 Warner?

24 A. I received it. I don't have a recollection at the
25 moment. But I know I received it, yes.

1 Q. It is an email from Clay Warner to you, to Robert
2 Seltzer, to Michael Glazer.

3 THE COURT: Glanzer. G L A N Z E R.

4 Q. Timothy Walsh,, do you know who Timothy Walsh is?

5 A. I believe he is Leboeuf Lamb, New York, I think.

6 Q. Steve Tumblin another LeBoeuf Lamb lawyer. Correct? He
7 is also recipient?

8 A. Yes.

9 Q. I would like to offer P 235 in evidence.

10 MR. FRAM: I have to object. First of all, it is
11 beyond the scope of direct. I don't see how it has relevance
12 to any issues in the case.

13 THE COURT: Why is this relevant to the case?

14 MR. JACOBSON: Sidebar?

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1 (At sidebar).

2 THE COURT: This appears to be somebody, somebody
3 circulated a draft of the position, I assume it was the
4 union's petition for its work in opposing the 1113.

5 MR. JACOBSON: I wouldn't say opposing.

6 THE COURT: What?

7 MR. JACOBSON: I would not say opposing. It is
8 their fee application saying that we should get paid various
9 moneys because we got the TWA pilots to waive their
10 protective scope, and that we prevent prevented a strike and
11 labor unrest.

12 THE COURT: We haven't seen that.

13 MR. JACOBSON: This document leads up to the filing
14 to get to it.

15 THE COURT: Well, you have got to lay more of a
16 foundation than just to stick this in evidence. All I know
17 is that it is an email. You can ask him, did you, are you
18 familiar with the fee petition. The basis of the fee
19 petition was, and the position ALPA took. I think that is
20 relevant.

21 MR. JACOBSON: I will go that way.

22 THE COURT: Just to hand this in. Maybe it will
23 become relevant. I don't know. Right now it is way more
24 than a foundation.

25 MR. JACOBSON: I understand.

1 (In open court)

2 THE COURT: I am going to sit over here for a few
3 minutes so I can empathize with the jury.

4 Okay.

5 MR. JACOBSON: Thank you, your Honor.

6 THE COURT: This is too much empathy.

7 I like the elevation.

8 BY MR. JACOBSON:

9 Q. Let me hand you this somewhat larger document, exhibit
10 P-226. This is already in evidence.

11 THE COURT: 226 is in evidence.

12 MR. JACOBSON: Yes.

13 THE COURT: All right.

14 Q. Mr. Holtzman, I would like to direct your attention if I
15 could to the point in time when the bankruptcy is winding
16 down. Do you recall that, sir?

17 A. Yes.

18 Q. And ALPA filed an application in bankruptcy court to be
19 awarded certain fees and dollars and all. Correct?

20 A. Correct.

21 Q. All right. And this document, with all these exhibits,
22 was what was filed in support of that?

23 A. It is a joint motion of TWA and ALPA.

24 Q. So TWA actually joined the bankrupt -- the bankrupt
25 actually joins with its union, the employee joined with the

1 union to support the union's application for these fees?

2 A. Apparently so.

3 THE COURT: What? Is the answer to that question
4 yes?

5 THE WITNESS: Yes.

6 MR. JACOBSON: I didn't hear it. Thank you, your
7 Honor.

8 Q. And among the reasons that ALPA gave for why it would be
9 entitled to these fees is that it persuaded the TWA pilots to
10 enter into a modified collective bargaining agreement as
11 required by the asset purchase agreement.

12 MR. FRAM: I object. The document is in evidence.
13 It speaks for itself.

14 THE COURT: No, I am going to ask him, I am going
15 to allow that question:

16 Q. Isn't that correct, sir?

17 A. Yes.

18 Q. Didn't ALPA say that when the post petition
19 negotiations, that is the negotiations after the bankruptcy
20 is filed, correct, were ongoing, that TWA filed its 1113
21 motion, correct? And that there was, it was ALPA's view that
22 if the 1113 motion went forward and was granted, that that
23 could have resulted in significant labor unrest, including a
24 strike. Was that part of this, you worked on this motion,
25 right?

1 A. No, I didn't.

2 Q. Didn't you, weren't you involved in correspondence with
3 the --

4 A. I, I did some backup research in terms of some facts
5 that Steve Tumblin was looking for. But the motion itself I
6 didn't, I did not work on.

7 Q. Who is the person at ALPA who was most responsible for
8 working on this motion, in your view?

9 A. I believe it was Steve Tumblin.

10 Q. I said at ALPA, as opposed to outside?

11 A. Oh, I am sorry.

12 A. It would be someone other than me. I am not sure who.

13 Q. All right. But you still have exhibit 235 in front of
14 you, right?

15 A. Yes.

16 Q. All right. You are involved in the set of emails of,
17 including yourself and Clay Warner, and the various outside
18 the lawyers, and working on the drafts of the motion.
19 Correct?

20 A. I received copies of emails of drafts of the motion.

21 Q. All right. And this exhibit, P-235, is one of the
22 emails you got involving the draft, and with Warner's
23 comments about how things should be changed or certain,
24 asking questions about whether certain things can be changed
25 in certain ways, right?

1 A. Yes.

2 Q. And you of course responded to him?

3 A. I think this is going to Steve Tumblin, I believe.

4 Q. You are the first recipient there listed, aren't you?

5 A. I am the first recipient listed.

6 Q. Okay.

7 A. I think this is from Clay Warner to Steve Tumblin.

8 Q. Well, if the two lines, the first name is Holtzman,
9 David, right. That is you?

10 A. Yes.

11 Q. Next one is emailing to himself at work because this
12 email comes from his home account, I believe. Next one is
13 Warner at ALPA dot org?

14 A. Yes.

15 Q. The next one is R Seltzer at his law firm address?

16 A. Yes.

17 Q. Then M Glanzer at his law firm?

18 A. Correct.

19 Q. Then Timothy Walsh, you said that is a partner of Steve
20 Tumblin from his office. Yes?

21 Q. And Tumblin is the last name?

22 A. Yes.

23 Q. And aren't you in fact receiving the various drafts of
24 the fee application and the various requests made by Mr.
25 Warner for information and Mr. Tumblin for information in

1 reviewing those?

2 A. I -- I didn't say that I wasn't. I did receive the
3 drafts and did read them.

4 Q. You did receive the drafts, right?

5 A. Yes.

6 Q. And you did read them?

7 A. Right.

8 Q. And you did make suggestions of changes when there are
9 things that are factually stated that you felt were
10 inaccurate?

11 A. I don't recall that I do that I did, that I did find
12 things that were factually inaccurate.

13 Q. I thought you said a few moments ago you were asked by
14 Mr. Tumblin to review certain facts and to investigate
15 certain factual items for him that he was unclear about?

16 A. What I did do was prepare this list of things that
17 exceeded the requested waivers in the asset purchase
18 agreement.

19 Q. This is the document that lists the things that were
20 given up by the TWA pilots beyond what American Airlines had
21 asked for?

22 A. That's correct.

23 Q. You prepared that list. And isn't it a fact that this
24 application asks for money for the expenses that Randy
25 Babbitt incurred on behalf of the TWA MEC?

1 A. I would have to read it again to know the answer.

2 Q. All right. Isn't it fact this document says one of the
3 things that ALPA brought of value to this was avoiding a
4 strike?

5 MR. FRAM: Your Honor, I thought that was asked and
6 answered.

7 MR. JACOBSON: It wasn't answered. We had an
8 objection and went to sidebar.

9 MR. FRAM: Maybe counsel can refer the witness to a
10 specific section or sentence so we can move along, if that is
11 the point of this.

12 THE COURT: Do you have, by the way, a copy of 226
13 in your hand.

14 MR. JACOBSON: He does.

15 MS. RODRIGUEZ: He has it.

16 THE COURT: Go ahead.

17 Q. Since this is in evidence, let me look at post certain
18 parts up so the witness can see them. Page 4?

19 THE COURT: Of this, 226.

20 MR. JACOBSON: Yes.

21 THE COURT: I will give it back to him.

22 MR. FRAM: Your Honor, you can have my copy.

23 THE COURT: No. We have it here. Okay.

24 Go ahead.

25 Q. Let's go to page 4, paragraph 10. This is a list of

1 some of the things that the TWA pilots gave up. Correct pay
2 increases, more than one and a half million dollars actual
3 annually in flight pay reimbursement. Do you see that?

4 A. I see that.

5 Q. That is called the flight pay loss amount?

6 A. Flight pay reimbursement, that would be flight pay loss,
7 yes.

8 Q. They gave up their contractual provisions against
9 furlough?

10 A. There was a provision that was not carried over, yes.

11 Q. Also gave up their right to participate in certain
12 management decisions?

13 A. Yes.

14 Q. You were citing all these things in support of your
15 application for fees and costs in the bankruptcy court.

16 A. I think so, yes.

17 Q. Next page, paragraph 15 on that. This is talking about
18 the 1113 motion, correct?

19 A. Yes.

20 Q. And this is essentially says that if the 1113 motion
21 went to a decision, it could either result in American
22 terminating the asset purchase agreement, right?

23 A. We are still on 15?

24 Q. Still on 15?

25 A. Let me catch up with you.

1 Q. Sure.

2 (Pause)

3 Q. Is that correct?

4 A. Yes.

5 Q. And also to, it could have resulted in significant labor
6 unrest including a strike?

7 A. That is what it says.

8 Q. That would have been a problem for the debtor going
9 forward.

10 A. If they had pilots employed and a strike it would be a
11 problem.

12 Q. Part of what this says, this is value we brought to the
13 building to the ability of TWA or its successor to go forward
14 as an operating airline, right?

15 A. I am not sure it is talking about the successor.

16 Q. No, TWA?

17 A. Yes.

18 Q. Go to the next page. There is a paragraph 18. ALPA is
19 saying that TWA's agreement to support the payment of ALPA's
20 legal fees was a critical element to ALPA's agreement to
21 enter into expedited negotiations. Correct?

22 A. That is what it says, yes.

23 Q. And these are things that are being filed with the
24 bankruptcy court or intended to be true, right?

25 A. Yes.

1 Q. And the agreement to support the payment of ALPA's legal
2 fees, that was in that document we were looking at the
3 beginning of your cross examination, correct, relating to the
4 business plan?

5 A. I am sorry. Could you --

6 Q. Remember we looked at documents early on, your
7 correspondence back and forth in December?

8 A. Correct.

9 Q. That is where they made the promise that they would pay
10 your attorneys' fees?

11 A. Oh, that was an agreement that was not executed. I am
12 not sure they are relevant. I mean I am not sure what the
13 question is.

14 Q. Wasn't that where they made the promise to pay ALPA's
15 legal fees if there is an asset purchase?

16 A. No, I don't think so.

17 Q. Okay. Now, you look a little lower on the same page,
18 page 6, there is relief that is requested, right?

19 A. Yes.

20 Q. This is the money you are asking the Court to award ALPA
21 out of the bankruptcy estate for the goods that they brought
22 to the ability of TWA to continue operating as an airline,
23 right?

24 A. I can't say that this is for TWA to continue operating.

25 Q. Well, for the operation not to be liquidated, to be able

1 to be sold as assets to TWA LLC?

2 A. Yes.

3 Q. And so this is the money you are asking be paid as
4 administrative expense, correct?

5 A. Just one minute, please.

6 Q. Sure. Last line on page 6 refers to as administrative
7 expenses.

8 A. It is characterized as administrative expense, yes.

9 Q. Administrative expense is something that is paid ahead
10 of all the unsecured creditors of the company, right?

11 A. Yes.

12 Q. It is paid ahead of anything, if there is anything left
13 over, it gets paid to the shareholders?

14 A. Yes.

15 Q. It is a high priority item?

16 A. High provide priority.

17 Q. ALPA is asking for \$525,563 for legal fees.

18 A. Yes.

19 Q. And would that include the bills of all the various
20 lawyers who are assisting TWA MEC in connection with the
21 bankruptcy?

22 A. I don't have the backup on what the fee dollar amount
23 for --

24 Q. We are talking about the fees for someone like Steve
25 Tumblin, correct?

1 A. You know, I presume so.

2 Q. And Seltzer? Is that right?

3 A. I don't know that.

4 Q. How about Wilder?

5 MR. FRAM: Your Honor, I really object to this.

6 THE COURT: He doesn't know.

7 MR. JACOBSON: I am asking a different person.

8 A. I don't know.

9 Q. Okay. Now, the next page, the additional amounts being
10 asked for here are \$56,776 for actual and necessary expenses
11 in rendering legal services during the period, right?

12 A. Yes.

13 MR. FRAM: I object. Is there an argument here
14 that it was improper for ALPA to seek reimbursement? This
15 has nothing to do with the issues in the case. I really
16 object to it consuming time, your Honor.

17 THE COURT: Yes. I think it does have something to
18 do with the case but I --

19 MR. JACOBSON: I am going to try to keep moving
20 along.

21 THE COURT: You are just testifying now. You are
22 using him as a foil for your own testimony. That is not
23 testimony.

24 The jury doesn't want to hear your testimony. They
25 want to hear the witness.

1 Q. Let's turn to page 9. There is a paragraph 26 there on
2 the main part.

3 You see filing says that ALPA and its lawyers have
4 benefited all parties, and benefitted --

5 A. I see that.

6 Q. And if you look at subpart C which continues on to the
7 next page, can you just tell the jury what the things that
8 benefited all the parties that ALPA did, what this one was?

9 THE COURT: I don't want to sit here and have him
10 read the agreement.

11 MR. JACOBSON: All right.

12 THE COURT: Let me ask you a question. Is it
13 correct that fees were being sought by ALPA for negotiating a
14 collective bargaining agreement with TWA LLC which reduced in
15 many, many ways, the benefits of pilots, looking for
16 compensation?

17 A. I don't think that is a true statement.

18 THE COURT: Isn't that what this says?

19 THE WITNESS: Well, it would appear to say that,
20 but I --

21 THE COURT: But it is filed by ALPA?

22 THE WITNESS: Well --

23 THE COURT: Doesn't it say what we are seeking
24 legal fees because we helped negotiate a CBA that took away a
25 wide variety of benefits the pilots had? Isn't that what

1 this whole document says?

2 THE WITNESS: It appears to say that, but I don't
3 know how that could be.

4 THE COURT: What is your next question?

5 MR. JACOBSON: Two more lines in this document and
6 that is it for this document.

7 THE COURT: All right.

8 Q. In paragraph C we have here, doesn't it say ALPA
9 believes that it would have been entitled to exercise its
10 self help remedies, it continues on the next page, under the
11 Railway Labor Act?

12 THE COURT: Which page are you on?

13 Q. Page 9, continuing on to page 10.

14 THE COURT: Which paragraph?

15 MR. JACOBSON: Paragraph 26 C, your Honor.

16 A. It says that.

17 Q. By self help we mean things like --

18 THE COURT: Striking.

19 Q. -- slowdowns, strikes, and so on?

20 A. Yes.

21 Q. The last line, the last paragraph of this document I
22 would like to turn to is page 12, paragraph 29. The first
23 three lines of the first sentence of that paragraph, doesn't
24 it say one of the reasons why ALPA believes it is entitled to
25 all this money it is asking for is because without the work

1 of ALPA's council, ALPA and the TWA pilots would have been
2 unable to evaluate or agree to make the requested changes to
3 the ALPA CBA, changes which resulted in a major contribution
4 to the American transaction?

5 A. Yes, that is what it says.

6 Q. And in fact, you agree that without the input that they
7 were getting from -- the input they were getting from Mr.

8 Seltzer, Mr. Tumblin, you, Mr. Warner, and the rest of them,
9 that these pilots would not have been able to have decided to
10 waive their scope and accept the new collective bargaining
11 agreement?

12 A. I don't think you can --

13 Q. You don't think so?

14 A. It is --

15 Q. I can't hear you.

16 A. I am sorry. It is impossible, I think, to know what
17 people would have decided under different circumstances.

18 Q. I will accept that statement. That is a fair statement.

19 MR. JACOBSON: Your Honor, ten minutes. I will see
20 how fast I can go.

21 Q. During the presentations that you claim took place on
22 April 1 and April 2, you weren't present for all of that?

23 A. I think I was out of the room for about ten minutes.

24 Q. Ten minutes. I will go with that.

25 When Woerth went to the APA meeting, the Allied

1 Pilots Association meeting on April 5, 2001, do you recall
2 that?

3 A. I recall hearing about it afterwards.

4 Q. Yeah, you didn't know about it have beforehand, right?

5 A. No.

6 Q. I am sorry?

7 A. I did not know.

8 Q. Correct. The meeting was in Washington, D.C. at the
9 Mayflower Hotel?

10 A. Yes.

11 Q. Those were put together by Senator Bond?

12 A. Yes.

13 Q. The meeting in St. Louis, when there was just a two-
14 member, remember there was a period of time for a couple of
15 weeks where there was just a two-member MEC?

16 A. Yes.

17 Q. All right. That meeting was called by Duane Woerth,
18 correct?

19 A. I thought so at the beginning, but it turned out that it
20 was called by Bob Pastore.

21 Q. In fact, you testified at your deposition it was culled
22 by Duane Woerth, didn't you?

23 A. I understood initially that it was. But I was
24 incorrect.

25 Q. Someone told you otherwise?

1 A. No, I saw an email where the, one of the administrative
2 assistance writing about that put out the notice for the
3 meeting.

4 Q. You knew that the Allied Pilots Association board was
5 meeting the very same day that this special meeting was
6 called on 24-hour notice?

7 A. I learned it during the meeting, that it was, that the
8 APA was meeting at the same time.

9 Q. All right. And let's talk briefly about amendable dates
10 versus termination dates?

11 A. Okay.

12 Q. Most collective bargaining agreements have what is
13 called an amendable date, right?

14 A. Most air carrier pilot agreements have amendable dates.

15 Q. Under the Railway Labor Act?

16 A. Yes.

17 Q. The notion is there is a date that comes where the
18 parties now start negotiating any changes they want but the
19 contract in place continues status quo forward, right?

20 A. Yes.

21 Q. And the TWA collective bargaining agreements you worked
22 with up until this transitional agreement all had amendable
23 dates?

24 A. Yes.

25 Q. If you have an amendable date and you have a change in

1 representation, different union coming in, the contract still
2 in place, it doesn't go away with the union, correct?

3 A. Usually that --

4 Q. Right. Because it is the contract between the
5 collective group of employees and their employer. The union
6 is the agent, exclusive bargaining agent and you can change
7 agents, correct?

8 A. Yes.

9 Q. All right. So under the TWA LLC, if TWA LLC's contract
10 had an amendable date, then the terms of that contract
11 between those employees and their employer would continue in
12 place even if ALPA left the property, right?

13 THE COURT: You are asking him for a legal opinion
14 on that?

15 MR. JACOBSON: He is the representation contract --

16 THE COURT: No.

17 MR. JACOBSON: -- guy --

18 THE COURT: That is a tricky question.

19 MR. JACOBSON: That is what he does for his living,
20 your Honor.

21 THE COURT: No, no. This is a one time, you know,
22 this is a very unusual situation. I don't think he is in a
23 position to advise the jury of what would happen to the
24 amendable date. This was a contract that everyone thought
25 was going to come to an end, it was going to be for a brief

1 period until there was a single carrier. Amendable date
2 makes sense for the wrong, you know --

3 Q. Isn't it a fact that the original idea was that the TWA
4 LLC and this contract would remain in place for three to five
5 years from the date of the transaction?

6 A. No, not at all.

7 Q. Not at all.

8 Isn't it a fact that the purpose of having a
9 termination date rather than an amendable date, and that
10 this purpose was discussed, the conversations in which you
11 were involved, was so that there would be no duty of fair
12 representation imposed upon APA at the end of the day when
13 the companies, the two airlines, were made a single carrier?

14 A. The, if someone had a motivation, it was not ALPA that
15 had a motivation and took action. It would have been
16 American Airlines, and I don't know all of their all of their
17 motivations.

18 MR. JACOBSON: Thank you. No further cross.

19 MR. FRAM: Your Honor, I have no redirect.

20 THE COURT: No redirect.

21 MR. FRAM: No redirect.

22 THE COURT: You may step down.

23 (Witness excused.)

24

25 THE COURT: Ladies and gentlemen, here is where I

1 think we stand.

2 I think the defendants have two more witnesses.
3 Three, three more witnesses.

4 MR. FRAM: That's correct, your Honor.

5 THE COURT: I think they have three. I think they
6 believe that those two witnesses, or three witnesses, can be
7 taken care of on Tuesday and Wednesday of next week.

8 MR. FRAM: We may have a little videotape as well,
9 your Honor.

10 THE COURT: I don't know.

11 MR. FRAM: There may be a couple minutes of a
12 deposition as well, but very short, your Honor. Two live
13 witnesses.

14 THE COURT: You agree that there is a chance that
15 will be done Tuesday or Wednesday.

16 MR. FRAM: That is our hope.

17 THE COURT: Now, there may be a day or so of
18 rebuttal. We don't really know at this point, a day or two
19 rebuttal by the plaintiffs. The plaintiffs don't have to
20 tell me that until they finish their case, which rebuttal
21 depends to some degree on what they hear in their case. So
22 it seems to me that with some effort we can finish all
23 evidence, not next week, but the beginning of the week after
24 that.

25 The week of July 11 I may ask you to sit a little

1 longer on, I think I am going to be ready for twelve or 15
2 hour days on Tuesday.

3 Again,, ladies and gentlemen, I think we have to
4 have some sympathy for counsel. I don't think counsel has
5 been dragging out the case. Both sides are very competent
6 lawyers. I just think, it is an important case to the
7 defendant and it is an important case to the plaintiff. And
8 I don't want I don't want you to get angry at anybody or
9 upset. I think we are trying to move the case as fast as we
10 can. I don't think there is, I don't think you think there
11 is time wasted. I hope you don't.

12 But that is, you know, right now my best guess is
13 not next week, but that the case will go to jury verdict the
14 week after next.

15 Does anybody disagree, any counsel disagree with
16 that?

17 MR. FRAM: No disagreement here, your Honor.

18 THE COURT: All right. So is it going to be
19 Monday, Tuesday, Wednesday, of the week of the 11th, I can't
20 say. The closing arguments, my guess is, and the charge to
21 the jury, we can do in one day. And then I can't even begin
22 to think what the, how long the jury will take. That is up
23 to you and actually your province.

24 With my love, my thanks, my appreciation, you are
25 looking at a Judge who has great faith in juries. I really

1 do.

2 And by the way, today completes my 19th year on the
3 bench. Today. I was sworn in on June 30.

4 July 1st, Saturday, but technically I was on the
5 job July 1st, 1992, is when I started. So today completes my
6 19 years. And in 19 years I have had a wonderful experiences
7 with juries. Never really a bad one.

8 And then my continued thanks. I know it is
9 disrupting your lives and I appreciate it. I really do. So
10 please have a wonderful 4th of July. And it is appropriate,
11 you know, the 4th of July and the jury system are related to
12 each other. It is very important protection that not
13 everyone has. The 4th of July to some degree ties in to what
14 we are doing here. Whether it ties in to what we are doing
15 here, or it means big slabs of meat on the barbecue, either
16 way, enjoy it.

17 Have a wonderful fourth of July. Remember, we will
18 see you Tuesday.

19 The 4th of July of course is Monday. Everything is
20 closed. So we will see you Tuesday morning at 8:25. Okay.
21 Again, do not discuss the case among yourselves. Keep an
22 open mind until you have heard all the evidence. Do not
23 discuss the case with your family friends or loved ones.

24 Wait until you have heard everything. We are
25 getting close to the end. And I will see you on Tuesday.

1 (The jury leaves the courtroom.)

2 THE COURT: Okay. Anything you want, that I need
3 over the weekend?

4 MR. FRAM: I don't think so, except our wishes for
5 a nice holiday.

6 THE COURT: I appreciate that. I am sure all
7 counsel feel that.

8 (Off the record discussion.)

9 MR. PRESS: I have something to discuss.

10 THE COURT: First of all, if there is proposal to
11 do radical surgery on Babbitt's deposition, I would like to
12 have it, I would like them to have it. And then I would like
13 to have it as well. All right.

14 Mr. Press.

15 MR. PRESS: The directed verdict motion that got
16 filed.

17 THE COURT: Yes. You were going to tell me what
18 you want to do.

19 MR. PRESS: What we would like to do is tell the
20 other side that they can reserve whatever they want to
21 reserve and we will brief it after verdict if necessary. We
22 would, if we would prevail there is going to be a notion J
23 NOV and another round of briefing. So that is our
24 suggestion, to think it makes the most sense.

25 THE COURT: Well, I mean I have a right but not an

1 obligation to defer a decision I believe on Rule 50 motion
2 until after the jury verdict. I think the rule covers that.
3 I don't have to do that. I can also decide it. And I think
4 he has a right to make me decide it. I don't want to -- by
5 the way, you can all sit down.

6 Now, if he agrees to have it submitted, you know,
7 then I can defer decision on that until after the verdict,
8 and then decide it, you are right, I only have to decide it
9 if it is an NOV, if it goes his way, is better off with a
10 jury verdict than just my decision. I don't know what he
11 wants to do.

12 MR. FRAM: Your Honor, we would want the Court to
13 rule on the motion. We of course would hope that the Court
14 would grant the motion in full, but we appreciate the
15 possibility that the Court may grant it in part. You may
16 dismiss certain claims --

17 THE COURT: Well, I find it a difficult motion only
18 in -- but for not the reason you might think. I find it a
19 difficult motion because most of the cases involving duty of
20 fair representation involve a union's relationship with
21 management. In other words, you know, negotiating with the
22 management.

23 You have read newspapers in the last 50 years. You
24 know about a sweetheart deal, with unions that side with
25 companies for various favors. That is usually the context.

1 A context where the fair representation is not interest, is
2 not a representation to deal with management. But with
3 another union. Negotiations with another union. Kind of
4 taking all the black letter law, and applying it to this
5 situation is difficult.

6 My, if you want me to decide it, I will decide it.
7 I will let them decide where they get in a brief or not.

8 It also makes the what also makes the case
9 difficult is that you will not find too many cases where,
10 particularly in the context where the argument is you have a
11 duty, you have a duty of fair representation is compromised
12 because, A, you knew you were going to lose this union and
13 you weren't going to have it any more in the foreseeable
14 future, a single entity, and B, you wanted to represent the
15 very large American union, or American pilots, obviously in
16 their own APA union.

17 How one deals, what type of proof one requires to
18 prove that kind of context is a little difficult. I don't
19 know that you get a lot of guidance from the black letter law
20 cases. And then if you try to give guidance from law, you
21 know, it is all conflict of interest. So far there, it is
22 only to translate the two.

23 My reaction is to try to let the jury have it, so I
24 have the jury verdict, whatever it, and then I have to decide
25 it because plaintiff has lost, in effect, NOV, that if, that

1 that is the way to go.

2 But if you want me to decide it, I will set a date
3 down for argument. Some Tuesday or --

4 MR. PRESS: We prefer you defer it, Judge.

5 THE COURT: I don't think you can compel him.

6 MR. PRESS: I am not suggesting I can.

7 THE COURT: If he consented to it, I would defer
8 it. I tell you that right now. But if he asks for a
9 decision, I think I have to give it to him. Now, my decision
10 may be to defer it. And, but that is different. Then I have
11 made a decision which is subject to review by the appellate
12 court. There are a couple of judges who are bankruptcy
13 experts and labor law experts. Judge Sloviter certainly a
14 legal expert. Well, there are a lot of judges up there who
15 may well have their own strong views.

16 The simple answer is if he asks me to decide it, I
17 am going to decide it, even if my decision is to defer it.
18 That is different from you agreeing to defer it. That puts
19 it in a different posture. I can make error, if my denial of
20 the motion, if you don't agree. It could be error. Couldn't
21 be error if both of you agree.

22 MR. FRAM: We do request the Court decide the
23 motion. We understand you may determine to defer it. We do
24 want to see the opposition papers. We think there are --

25 THE COURT: I am not requiring opposition papers.

1 It is up to them, whatever he wants to do. I mean this is a
2 case that I have a fair amount of work on. It is up to him.
3 I have already read your papers. A few times. But the, and
4 the attachments. I am going to leave it to plaintiff's
5 counsel if they want to do a brief or not. If you want to do
6 one, you got it put it together so I can hear this on
7 Tuesday.

8 I can also hear it Thursday afternoon, too. Would
9 you rather do it Thursday?

10 MS. RODRIGUEZ: I would ask that we at least have
11 that.

12 THE COURT: That will give you a couple extra days
13 to put something together.

14 MR. PRESS: Okay.

15 MR. JACOBSON: Thursday of next week?

16 THE COURT: Yes. The quality of your legal work
17 will be in direct proportion to the shortness of time I allow
18 for. The less time you have to do it, the higher the quality
19 of the work. You know that. Don't you?

20 MS. RODRIGUEZ: The less time you have to do it?

21 THE COURT: The less time you have to do it, the
22 higher the quality. Shorter, more comprehensible. More time
23 you have, the more you write.

24
25 (Off-the-record discussion)

1 THE COURT: Anything else?

2 MR. FRAM: We will confer with counsel on remaining
3 deposition issues and let you know Tuesday.

4 THE COURT: Still in a sense hanging out there is
5 Sherry Cooper.

6 I know, I am very uninclined to let the deposition
7 in as it is now done. But I would be inclined to let her
8 testify, even about some of the same areas.

9 MR. PRESS: You have given us plenty of guidance on
10 what you find problematic. We will endeavor to shorten it.

11 THE COURT: Okay. I mean I just find troublesome
12 the absence without the ability to cross examine. I do not
13 accept the notion that because it is a discovery deposition
14 he had the opportunity to cross examine: People generally
15 cross examination unless it is de bene esse.

16 We have doctors who don't want to come to court.
17 They want to get their six grand fees by sitting in the
18 office on a tape. I call it a de bene esse deposition.
19 Whoever is calling the doctor, objections are made just as
20 they would be in the courtroom, and then there is cross
21 examination just the way it is in a courtroom. When we play
22 it, the jury hears proper testimony. Particularly in the
23 area here where there is so many much hearsay. That is just
24 not the way this deposition is taken.

25 An adversary's deposition, it is not for anybody.

1 MR. FRAM: I think it is in Rule 32, your Honor.

2 THE COURT: Any purpose. She is not a party to
3 this case. TWA is not a party to this case.

4 I find it very troublesome. Not that I am un-
5 sympathetic to having her come in and testify, which I am not
6 unsympathetic to that.

7 MR. PRESS: We are going to try, but it is not
8 happening.

9 MS. RODRIGUEZ: I will give it a shot.

10 THE COURT: Yeah. And again, there is the
11 possibility you have to work fast but taking it as a de bene
12 esse where you ask the questions, you know, taking it
13 wherever she is.

14 MS. RODRIGUEZ: She was in Florida. I haven't
15 heard that she is not.

16 THE COURT: Anything else?

17 Have a very good 4th of July weekend. And God
18 willing, I will see you Tuesday morning.

19 (Adjourned at 2:30).
20
21
22
23
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David Holtzman, Sworn.

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